



## Binding information issued by the Federal Central Tax Office

### 1. General

If a foreign investor wants reliable information on which to base plans for an undertaking in Germany and files an application with a specific legal query, the Federal Central Tax Office may issue a binding information on the proposition's tax implications. The applicant must give credible reasons for its particular interest in having this tax information provided.

Under the statutory provisions of Sect. 89 (2) of the German Fiscal Code (Abgabenordnung), the Federal Central Tax Office is authorised to decide at its own discretion whether or not a ruling can be issued. By issuing a binding information on the tax that will be incurred by a specific project, the legislator aims to give the potential investor an opportunity to have the tax issues involved crosschecked before a tax assessment is actually made later on.

Applications for a binding information aimed at obtaining primarily some kind of tax advantage cannot be considered. In particular, the law's intent and purpose is not to provide binding information on set-ups aimed at achieving tax avoidance.

A binding information can only be issued if for the most part the proposition has not yet been realised, i.e. if the applicant can still alter arrangements. After the plans have actually been implemented, any legal issues arising can only be decided in normal assessment procedure.

The applicant must be the party who will be liable to pay tax if the plan is carried out.

A binding information is an administrative act and may be challenged by filing an objection. If an application for the issuing of a binding information is turned down, this is also an administrative act which may be appealed against.

### 2. Competence

By law, the Federal Central Tax Office is only responsible for issuing a binding information if on the date when the application is filed, no German tax office is responsible for taxing the applicant. A foreign investor planning an undertaking in Germany generally does not yet have a competent tax office in Germany, and in these cases the Federal Central Tax Office deals with the application.

The Federal Central Tax Office is only competent for so-called "common taxes" (taxes shared between different levels of government: income tax, corporation tax, solidarity surcharge, value-added tax and insurance tax). Competence has to be reviewed for each type of tax separately.

In some cases, this may mean for example that on the application date, a local German tax office is already responsible for dealing with an applicant's value-added tax, but no tax office here is responsible yet for dealing with its income tax. In any such case, the local tax office already involved has to issue a ruling on value-added tax, whilst the Federal Central Tax Office is responsible for issues concerning income tax.

### 3. Formal application requirements

Applications for binding information have to be filed in writing.

The requirements stipulating the form and content of applications for binding information are laid down in Sect. 1 of the [Steuerauskunftsverordnung](#) (Tax Information Ordinance). The information, statements and warranties specified there are obligatory. If an application fails to meet any of the requirements relating to form and content, then the competent tax authority will refuse to consider it in the manner presented.

### 4. Binding effect of rulings issued

A ruling issued by the Federal Central Tax Office is binding on the tax office responsible for assessing the applicant's tax later on.

Note: The ruling issued is only binding for taxing the applicant if the main aspects of the proposal on which the ruling is based have actually been realised.

If the ruling is issued by a tax authority lacking factual and/or local competence, then it does not acquire any binding effect. It is therefore decisive that an application for a binding information be filed with the tax authority responsible for issuing it.

### 5. Fees

A fee is charged for processing applications for a binding information.

The fees charged depend on the value of the ruling to the applicant (amount at issue). This depends on the tax that will be incurred by the proposition put forward. The applicant should state the amount at issue in the application. For recurring matters, the average tax incurred in any one year should be given. If the amount at issue cannot be determined, then a time fee is charged.

Example:

Tax incurred = amount at issue in the binding information applied for:	100,000 €
Fee charged:	856 €

The actual binding ruling is always only issued once the fee has been paid.

The fee may be reduced if the application for a binding information is withdrawn before issuing the binding information.

The fee is charged in an administrative act, to which an objection may be filed.