Fact Sheet: Inheritance in Germany

Provided by:

FORUM von Seelstrang & Partner mbB
Rechtsanwälte Steuerberater Wirtschaftsprüfer

Brienner Straße 55 . D-80333 München
https://vonseelstrang-partner.de/

Inheritance in Germany

Are you planning to move to Germany- to live and work there? If you have already taken care of your affairs in Australia and made provision for your successors, you should give some thought to what effect your move to Germany may have on this. The following information is to provide you with some food for thought in this regard and to set out the basics of German inheritance law.

In contrast to Australian law, German law is based on written statutory law. German inheritance law is comprehensively, and uniformly across Germany, governed by the German Civil Code, the German Civil Procedure Code and Family Proceedings Act, among others.

1. When does German inheritance law apply?

Under European law, German inheritance law applies to everyone who has their usual abode in Germany. There is no unequivocal definition of “usual abode”. Whether this is in Germany will depend on the facts of the individual case. The usual abode is not identical with the concept of domicile. Citizenship is not relevant. This applies practically Europe-wide, e.g. for an Australian who has his usual abode in Italy, Italian law applies. This fundamental concept also applies to any Australian real property owned by the testator. However, Australia (i.e. Australian authorities or courts) do not accept this. From their perspective Australian inheritance law applies to Australian real property. Accordingly, the potential for conflict is pre-programmed. Under European/German law, the testator can expressly choose the law of the country of residence as the applicable law, however it is questionable whether Australian courts will respect this. Therefore, the testator should obtain advice specific to their individual circumstances.

2. How do the laws of succession work in Germany?

Under German inheritance law, the principles of universal succession and self-acquisition apply. Directly following the passing of the testator, the heir or heirs acquire all rights and obligations of the testator. Thus, there is no official act of transfer, no executor and also no estate with its own legal personality. In addition there is no legal successor for individual objects. Therefore, in Germany one does not inherit “the property” or “the bank account”, but rather automatically becomes the legal successor of all assets and liabilities of the testator as an individual or as a community of heirs (a group of heirs acting together).

The heir can disclaim the inheritance within six weeks after the heir becomes aware of it. This deadline can be extended to six months if the last place of residence of the testator was outside of Germany. Thus, an heir that does not wish to take possession of the estate must comply with the deadline.

A person can become an heir due to the operation of law or by reason of a testamentary disposition (by Will, e.g.).

3. What forms of testamentary dispositions are there?

A Will is the essential instrument that provides for the distribution of assets in the event of death. There are also inheritance contracts and mutual Wills by spouses. Spouses are persons of the same or different sex who are married (in principle) for life (thus, unmarried domestic partners are not included). All testamentary dispositions can be made before a Notary (without the need for any witnesses to be present), for inheritance contracts the notarial certification is mandatory. In addition to the notarial certification holographic wills are accepted which must be handwritten and signed by the testator. Therefore, there is also no need for any witnesses to be present. For mutual Wills by spouses it is sufficient if one spouse handwrites the Will and both spouses sign it. Witnesses are not necessarily required here either.

4. What are the laws of intestacy in Germany?

The statutory laws that apply in the absence of a testamentary disposition start from the principle that the relatives of the deceased are entitled to the estate in a strict order of succession. Relatives inherit if they are the closest in line to the deceased. The first category of relatives is the children (deceased children are replaced by their children). The second category of relatives are the parents (deceased parents are replaced by their children, i.e. the siblings or half-siblings of the deceased). The Act defines the further categories of heirs in the same manner. The relatives in the second category only stand to inherit if there are no relatives in the first category. The same applies to the relationship of the second category to the third category and so on.

Alongside the relatives, the spouse of the deceased also has a statutory right of inheritance. Depending on what system of property rights applies to the marriage of the spouses and which relatives the deceased has left behind, the statutory share of inheritance for the spouse will be 1/4, 1/3 or one half. If there are no relatives in the first or second category, and no grandparents, then the surviving spouse will be the sole heir. The statutory right of inheritance for the spouse is excluded if at the time of death the conditions for divorce were satisfied and the deceased had applied for divorce or consented to it.

5. What is a bequest?

If the testator desires that certain persons should not be heirs but rather should inherit only individual objects from the estate, then the testator can direct that individual bequests be made under German law. However, the bequeathed object is not transferred to the possession of the legatee immediately on the death of the testator. The heirs must release the object to the legatee.

Deutsch-Australische Industrie- und Handelskammer | German-Australian Chamber of Industry and Commerce
Level 6 | 8 Spring Street | Sydney NSW 2000 | Tel. +61 2 8296 0400 | Fax: +61 2 8296 0411
Level 5 | 121 Exhibition Street | Melbourne VIC 3000 | Tel: +61 3 9027 5615 | ABN 75 001 428 968
www.germany.org.au | info@germany.org.au

6. Does German law allow for family provision for close relatives or spouses?

The testamentary freedom of the testator is fundamentally protected. However, the same applies to the minimum share of the estate for close relatives and the spouse, which can only be excluded in absolutely exceptional cases. This means that the testator can disinherit his children, parents and spouse under his Will, but these persons will still have a claim for a compulsory share in money against the heir or heirs, being half of the value of their right under the laws of intestacy.

7. What happens following the death of the testator?

The entire assets and liabilities of the deceased are transferred automatically to the heir or heirs by operation of law. The heir is responsible for the liabilities without limitation, unless application is made for estate insolvency proceedings or administration of the estate. A person who does not wish to inherit at all due to liabilities must disclaim the inheritance. For the disclaimer a deadline of six weeks after the heir becomes aware of the inheritance and grounds for their appointment applies; generally that means six weeks after the death of the testator.

If several heirs are appointed then they are entitled to (and obliged to fulfil all responsibilities of) the estate as a community of heirs. The estate can only be dealt with jointly, i.e. administrative decisions must be made jointly. That can lead to disputes. Proof of which persons have become heirs and what relationship they have with the deceased is generally provided in Germany by a Certificate of Inheritance or – in a somewhat weakened form – by the European Estate Certificate. An application for a Certificate of Inheritance can be made at the Probate Court or with a Notary Public. The Certificate of Inheritance itself is issued by the Probate Court. It is generally not required if the deceased has made a notarized Will or inheritance contract.

8. How is inheritance taxed in Germany

Inheritance tax applies uniformly in Germany by the Inheritance Tax Act. It applies if, at the time of accrual, either the deceased or the beneficiary had their place of residence in Germany, or is a German citizen and has not had their place of residence outside of Germany continuously for more than five years. The applicable tax rate depends on the net value of the assets of the estate acquired and the tax category of the beneficiary. The tax rates are spread across three tax categories. The relevant tax category depends on the relationship of the deceased to the beneficiary. This relationship also determines the tax free amount (in the individual case up to EUR 500,000.00 e.g. for a spouse). The entire world-wide assets are taxed, i.e. also the assets that are located in Australia. Due to the different taxes that are levied in Germany and Australia, it is especially important for persons whose assets will be affected by both systems to undertake careful succession planning ahead of time.

Deutsch-Australische Industrie- und Handelskammer | German-Australian Chamber of Industry and Commerce
Level 6 | 8 Spring Street | Sydney NSW 2000 | Tel. +61 2 8296 0400 | Fax: +61 2 8296 0411
Level 5 | 121 Exhibition Street | Melbourne VIC 3000 | Tel: +61 3 9027 5615 | ABN 75 001 428 968
www.germany.org.au | info@germany.org.au

Ansprechpartner

Mario von Seelstrang
Managing Partner

Tel.: +49 89 17113217
E-mail: mario.vonseelstrang@vonseelstrang-partner.de

Ansprechpartner

Fr. Birgit Tegethoff
Director Consulting Services

Tel.: +61 2 8296 0455
E-mail: birgit.tegethoff@germany.org.au

Disclaimer:
Please note that the content of this leaflet is intended only to provide a general overview on matters of interest. It is not intended to be comprehensive, nor does it constitute legal advice. Please seek professional advice from a lawyer in respect of your particular individual circumstances before acting or relying on any of the content of this leaflet.