IRA and 401(k) Distributions to a Beneficiary in Germany: U.S. Withholding, the Treaty That Reduces It to Nothing, and the German Taxation of the Distribution After the 2025 Reform

An Adviser's Guide for U.S. estate planners, CPAs, plan administrators, and custodians whose client or whose client's beneficiary lives in Germany and draws on a U.S. retirement account: why the income tax treaty, not the Code, decides who taxes a pension and assigns it to Germany under Article 18; the 30 percent withholding of Section 1441 that displaces the domestic rules and the Form W-8BEN, now with the German tax number, that reduces it to nothing; how Germany taxes the distribution under § 22 Nr. 5 EStG, the Bundesfinanzhof's decision of June 25, 2025 for distributions through 2024, and the Annual Tax Act 2024 that taxes the whole distribution from 2025; the Roth account, the annuity, and the timing of the move as the levers that remain; the U.S. citizen in Germany under the saving clause and Article 23(5); the inherited account under the estate tax treaty, the German inheritance tax, § 35b EStG, and the ten-year rule; and the coordination that makes the account taxed once

Let's consider the following case: A German engineer who spent sixteen years with a defense contractor in Northern Virginia returns to Munich at sixty-two with a 401(k) of $1.4 million and a rollover IRA of $600,000. Her Virginia adviser has two pieces of good news: the treaty will stop the United States from withholding on her distributions, and Germany, on the case law he has read, taxes only the growth. The first piece of news is right, once the documentation is in order. The second was right until December 31, 2024. On June 25, 2025 the Bundesfinanzhof confirmed that a 401(k) distributed through 2024 was taxed in Germany only on its earnings; but the Annual Tax Act 2024, enacted six months before the court spoke, had already rewritten the statute for 2025 and after, so that a plan whose contributions were tax-favored in the United States is now taxed in Germany on the whole distribution, contributions and growth alike, at progressive rates that reach 45 percent. The engineer who takes her lump sum in Munich in 2026 pays German tax on $2 million; the engineer who took it in Fairfax in 2024 paid German tax on nothing.

The mistake this article exists to prevent is the assumption that the U.S. side is where the tax on a U.S. retirement account is decided. For a beneficiary resident in Germany it is not. The income tax treaty assigns a private pension to the country of residence, so that the United States, once the treaty claim is perfected, withholds nothing and taxes nothing on a distribution to a German resident who is not a U.S. citizen; the whole of the tax is German, and the German rule changed on January 1, 2025. Through 2024 a 401(k) or IRA funded with contributions that were never tax-favored in Germany was taxed under § 22 Nr. 5 sentence 2 EStG on the difference between the payout and the contributions, in some cases on half of it, and in the oldest plans on nothing. From 2025 the Annual Tax Act 2024 treats contributions that were exempt or deductible abroad as tax-favored, so that the distribution falls under sentence 1 and is taxed in full. The Roth account, the lifelong annuity, and the timing of the move relative to the distribution are the levers that remain, and the adviser who models them before the client leaves the United States is worth more than the adviser who perfects the treaty claim after she arrives.

For this readership the treaties are the rule, and there are two of them. The income tax treaty does the allocating: Article 18(1) gives pensions in consideration of past employment to the residence State, Article 21 gives whatever is not a pension to the residence State as well, Article 18(5) gives U.S. Social Security paid to a German resident to Germany, and the saving clause of Article 1(4) keeps a U.S. citizen in Germany within U.S. tax with the credit mechanics of Article 23(5). The estate tax treaty decides the death: under Article 9 a retirement account of a decedent domiciled in Germany is taxable only in Germany, whatever its U.S. situs, and under Article 11(1)(b) Germany taxes the German heir of a U.S. decedent with a credit for the U.S. tax. The Code and the German statutes decide the rest, and the German statute is the one that has moved. Statuses are stated as of this writing in September 2026; confirming them is part of any real engagement.

This article covers the two-country frame and the treaty allocation; the U.S. side, with the Section 1441 regime, the documentation, the custodians, and the U.S. citizen in Germany; the German side under § 22 Nr. 5 EStG before and after 2025, with the Bundesfinanzhof's decisions of June and October 2025, the Roth account, the annuity, the IRA question, and the timing of the move; the coordination of the two sides with two illustrations; the inherited account; and the practice points.

Summary

(1) A distribution from a U.S. IRA or 401(k) to a nonresident alien is U.S. source pension income subject to 30 percent withholding under Section 1441, which displaces the 10 and 20 percent domestic rules of Section 3405.

(2) The treaty reduces it to nothing: Article 18(1) makes pensions in consideration of past employment taxable only in the residence State, Article 21 does the same for an IRA that is not employment-derived, and the German treaty has no lump-sum carve-out. The claim is made on Form W-8BEN, on which the German Steuer-Identifikationsnummer satisfies the TIN requirement since 2017 (Treas. Reg. § 1.1441-6(b)(1)); an ITIN is needed only for a refund on Form 1040-NR.

(3) U.S. Social Security paid to a German resident is taxable only in Germany under Article 18(5).

(4) A U.S. citizen resident in Germany is taxed by both countries under the saving clause; Article 23(5) makes Germany credit nothing (a non-citizen would owe no U.S. tax) and makes the United States credit the German tax with resourcing on Form 1116.

(5) Germany taxes the distribution as other income under § 22 Nr. 5 EStG. For distributions through 2024 the Bundesfinanzhof held on June 25, 2025 (X R 23/22) that a 401(k) is comparable to a German occupational pension vehicle and taxed under § 22 Nr. 5 sentence 2(b): for a plan begun after 2004 the difference between payout and contributions, halved if paid after age 60 (62 for plans begun after 2011) and twelve years; for a plan begun before 2005, possibly nothing.

(6) From 2025 the Annual Tax Act 2024 treats contributions that received a comparable exemption or deduction in another State as tax-favored, so that a traditional 401(k) or deductible IRA distribution is taxed in full under § 22 Nr. 5 sentence 1 at progressive rates up to 45 percent, without the rate relief of § 34 EStG for a freely chosen lump sum (BFH of October 30, 2025, X R 25/23).

(7) Roth accounts and nondeductible contributions stay under sentence 2: Germany taxes at most the earnings, and possibly half of them. A lifelong annuity under sentence 2 is taxed only on the age-based Ertragsanteil, 18 percent at 65.

(8) The Bundesfinanzhof has decided 401(k) plans; the tax administration applies § 22 Nr. 5 to IRAs as well, but the view that an IRA is a transparent custodial account taxed currently under § 20 EStG exists and the point is undecided.

(9) The burden of proving the contributions, the plan dates, and the pre-tax, after-tax, and Roth components lies with the beneficiary; the U.S. side holds the records.

(10) The largest lever after 2025 is timing: a lump sum or a Roth conversion completed while the client is still a U.S. resident is outside German tax; the same distribution after the move is taxed in full.

(11) On death: under Article 9 of the estate tax treaty the account of a German-domiciled decedent is taxable only in Germany; a U.S. citizen's account is on Form 706 with § 691(c) relief; the German heir pays inheritance tax on the balance, income tax on the distributions as income in respect of a decedent without step-up, § 35b EStG relief for the overlap, and must empty a non-spousal inherited account within ten years under the SECURE Act, with each distribution at 0 percent U.S. withholding on the treaty claim.

Part I. The Two-Country Frame: The Treaty Allocates, the Statutes Tax

A U.S. retirement account raises tax in two systems that must be made to fit. The United States asserts a source claim: the distribution is U.S. source income, taxable to a nonresident by withholding at the source. Germany asserts a residence claim: the worldwide income of a person resident in Germany, including a foreign pension, is subject to German income tax under § 1(1) EStG. The income tax treaty of 1989, as amended by the Protocol of 2006, decides which claim prevails, and for private pensions it decides for residence. Article 18(1) provides that pensions and other similar remuneration beneficially owned by a resident of a Contracting State in consideration of past employment are taxable only in that State; Article 18(2) does the same for annuities; and Article 21(1), the residual article, assigns income not dealt with elsewhere to the residence State as well.[1] A 401(k) plan and an IRA funded by a rollover from one are pensions in consideration of past employment. A contributory IRA that was never connected with employment is, on a strict reading, not a pension under Article 18(1), but it then falls under Article 21, and the result is the same: taxable only in Germany. Unlike the U.S.–U.K. treaty, which returns lump sums to the source State, the German treaty contains no lump-sum carve-out, so that a periodic pension and a single distribution are allocated alike; the IRS withholding tables treat pensions and annuities paid to a resident of Germany as exempt on a treaty claim.[2] The intended steady state is therefore that the United States withholds nothing and Germany taxes the distribution under its own rules, and the adviser's two tasks are to make the withholding conform to the treaty and to understand the German tax

[1] § 1(1) EStG; Article 18(1) and (2) and Article 21(1) of the Convention between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital and to Certain Other Taxes of August 29, 1989, as amended by the Protocol of June 1, 2006; Treasury Department Technical Explanation of the 2006 Protocol, Article 18.

[2] Compare Article 17(2) of the U.S.–U.K. income tax treaty of July 24, 2001 (lump-sum payments taxable in the source State); the Germany–U.S. treaty contains no corresponding provision; IRS Publication 515, Table 1 (income code 15, pensions and annuities: Germany, 0 percent on a treaty claim); on the Article 21 characterization of a contributory IRA, the residual article assigns the income to the residence State in any event.

that results, because that tax, not the U.S. tax, is the real cost, and it has just been reshaped.

Two treaty provisions qualify the picture. Article 18(5) assigns social security benefits paid under the law of one State to a resident of the other State to the residence State alone, and requires the residence State to treat them as benefits under its own system; U.S. Social Security paid to a German resident is therefore taxable only in Germany, as a German statutory pension would be.[3] And the saving clause of Article 1(4) preserves the right of the United States to tax its citizens and residents as though the treaty did not exist, subject to the exceptions of Article 1(5), among them the credit rules of Article 23(5); a beneficiary in Germany who is a U.S. citizen does not receive the residence-only exemption, and Part II returns to her.[4]

A parallel frame governs death. A U.S. retirement account of a nonresident decedent is U.S. situs property for the estate tax under the Code, but the estate tax treaty of 1980, a separate instrument, allocates the property of a decedent domiciled in Germany to Germany alone under Article 9, retirement accounts included, and reserves for Germany under Article 11(1)(b) the taxation of a German heir of a U.S. decedent with a credit under Article 11(3)(b) for the U.S. tax. The income analysis and the transfer analysis are distinct, and both must be run; Part V takes the death.[5]

Part II. The U.S. Side: The Section 1441 Regime, the Documentation, and the Citizen in Germany

Thirty percent, not ten or twenty

For a U.S. payee, withholding on a retirement distribution follows Section 3405: wage-table withholding on periodic payments and 10 percent on other nonperiodic distributions, both of which the payee may waive unless the payment is delivered outside the United States, and a mandatory 20 percent on an eligible rollover distribution from a qualified plan that is not rolled over directly. Those rules do not apply to a nonresident alien. Section 3405(e)(1)(B) excludes from its scope any amount subject to withholding under Section 1441, and once the payee's foreign status is documented the distribution is governed by Section 1441 at a flat 30 percent of the gross amount, or the treaty rate, collected and remitted by the plan administrator or custodian as withholding agent and reported on Forms 1042 and 1042-S rather than Form 1099-R.[6] The 10 and 20 percent figures are simply the wrong numbers for a payee in Germany; the statutory default is 30 percent, and where foreign status is undocumented the presumption

[3] Article 18(5) of the income tax treaty as amended by the 2006 Protocol (social security benefits and other public pensions paid by one State to a resident of the other taxable only in the residence State, and treated there as benefits under its own social security system); § 22 Nr. 1 sentence 3(a)(aa) EStG (taxable portion of statutory pensions by cohort).

[4] Article 1(4) (saving clause) and Article 1(5) (exceptions, including Article 23(5)) of the income tax treaty; IRC § 7701(b) (resident alien; a green-card holder who claims treaty residence in Germany under § 7701(b)(6) becomes a nonresident alien and, if a long-term resident, an expatriate under § 877A).

[5] IRC § 2103, § 2104, § 2105 (situs of a nonresident's property; a retirement account held with a U.S. custodian is treated as U.S. situs property); Articles 4, 9, 10(5), and 11(1)(b) and (3)(b) of the Convention between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Estates, Inheritances, and Gifts of December 3, 1980, as amended by the Protocol of December 14, 1998.

[6] IRC § 3405(a) (periodic payments withheld as wages), (b) (10 percent on nonperiodic distributions), (c) (20 percent on eligible rollover distributions), § 3405(e)(1)(B)(iii) (a designated distribution does not include any amount subject to withholding under subchapter A of chapter 3), § 3405(e)(13) (no election out of withholding for payments delivered outside the United States); § 408A(d)(1) and § 3405(e)(1)(B)(ii) (a qualified Roth distribution is not includible in gross income and is not a designated distribution); § 1441(a); Treas. Reg. § 31.3405(c)-1; Forms 1042 and 1042-S; Treas. Reg. § 1.1441-1(b)(3) (presumption rules) and § 3406 (backup withholding).

rules produce either that 30 percent or, if the payee is treated as a U.S. person, Form 1099-R reporting and backup withholding. The rate the custodian applies is driven by documentation, not by the beneficiary's actual residence. The distribution is U.S. source to the extent it is attributable to employer contributions for services performed in the United States and to the earnings of the account, which are U.S. source in any event, and the ordinary 401(k) of a client who worked in Virginia is U.S. source in full; only the portion of a plan built on years of service abroad is foreign source and outside withholding.[7] A qualified distribution from a Roth IRA is excluded from gross income altogether and is subject to no U.S. withholding, treaty or no treaty.

The documentation, and the tax number that now suffices

The beneficiary furnishes Form W-8BEN, establishing residence in Germany and claiming, in Part II, the treaty benefit under Article 18 for a plan or rollover distribution, or under Article 21 for a contributory IRA. A treaty claim must be supported by a taxpayer identification number, and for years that meant an ITIN obtained on Form W-7 with a certified passport copy, a process that took months and that many beneficiaries never completed. Since T.D. 9808 of January 2017, Treas. Reg. § 1.1441-6(b)(1) accepts instead the foreign tax identifying number issued by the beneficiary's country of residence where that country has an income tax treaty or information exchange agreement in effect with the United States, which Germany has; the eleven-digit German Steuer-Identifikationsnummer on line 6 of the form therefore supports the zero rate, and no ITIN is required for the withholding claim.[8] The ITIN remains necessary for one purpose, the refund: a beneficiary from whom 30 percent has been withheld in error recovers it only by filing Form 1040-NR with the Form 1042-S attached, and that return requires an ITIN.[9] A Form W-8BEN is valid through the third calendar year after signature, indefinitely with a TIN where the custodian reports a payment each year, and invalid within 30 days of a change in circumstances.

The practical obstacle is the custodian. Many U.S. custodians and plan administrators will not process a treaty claim on a retirement distribution, will not remit to a foreign bank, or withhold 30 percent whatever the form says; some will close an account whose owner has moved abroad. A treaty that entitles the client to zero withholding does the client no good if the custodian withholds 30 percent and the refund takes two years. The adviser confirms the custodian's policy before the move, transfers the account to a custodian that honors treaty claims where necessary, and secures the Form W-8BEN before the first distribution rather than after the first Form 1042-S.[10]

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[7] IRC § 861(a)(3), § 862(a)(3) (compensation for services sourced where the services are performed); Rev. Rul. 79-388, 1979-2 C.B. 270 (employer contributions attributable to services performed in the United States are U.S. source, those attributable to services abroad foreign source, and earnings and accretions on contributions of either party are U.S. source); Rev. Proc. 2004-37, 2004-26 I.R.B. 1099 (method for allocating a defined benefit pension between U.S. and foreign source where actual contributions are unknown); Treas. Reg. § 1.1441-2(b).

[8] Treas. Reg. § 1.1441-6(b)(1), as amended by T.D. 9808 (January 6, 2017) (a treaty claim is supported by the beneficial owner's U.S. TIN or by a foreign tax identifying number issued by the beneficial owner's country of residence where that country has an income tax treaty or information exchange agreement in effect with the United States); Form W-8BEN (2021 revision), line 6a and Part II; § 139b AO (Steuer-Identifikationsnummer); the exceptions of Treas. Reg. § 1.1441-6(c)(2) for actively traded securities do not cover pensions, so that a number, U.S. or German, is required.

[9] IRC § 1464; Form 1040-NR and Instructions (credit for tax withheld shown on Form 1042-S); Form W-7 and Treas. Reg. § 301.6109-1(d)(3); Treas. Reg. § 1.1441-1(e)(4)(ii)(A), (B), (D) (validity periods and change in circumstances).

[10] On custodian practice, the account agreements of the principal U.S. custodians and the SEC and FINRA guidance on servicing accounts of customers resident abroad; Treas. Reg. § 1.1461-1(b), (c) (Forms 1042 and 1042-S).

The U.S. citizen in Germany

A beneficiary in Germany who is a U.S. citizen, a dual national or an American who retired to Munich, is outside the residence-only rule. Under the saving clause the United States taxes the distribution as it taxes its citizens' worldwide income, on Form 1040 at graduated rates, and the custodian, dealing with a U.S. person, applies Section 3405 rather than Section 1441 and reports on Form 1099-R, without the option to waive withholding on a payment delivered to an address outside the United States; Germany taxes the same distribution as the country of residence. Article 23(5) resolves the overlap in a manner that surprises: because a German resident who was not a U.S. citizen would owe no U.S. tax on the distribution under Article 18, Germany credits nothing under Article 23(5)(a), taxes the distribution in full under its own rules, and leaves it to the United States, under Article 23(5)(b) and (c), to credit the German tax against the U.S. tax on the distribution, with the income resourced to Germany on Form 1116 so that the limitation of Section 904 does not defeat the credit.[11] The citizen therefore bears the higher of the two taxes rather than their sum, and since 2025 the higher tax is usually the German one; the credit is claimed on the U.S. return, and a Form 1040 prepared without the resourcing election produces a double tax that the treaty was written to prevent. The distinction between the non-citizen German resident, with full treaty relief, and the citizen German resident, with credit relief, is the first question in every file.

Beneficiary and distribution	**U.S. withholding with Form W-8BEN (German tax number)**	**Where taxed**
Non-citizen resident of Germany; periodic payments from a 401(k) or rollover IRA	0 percent: Article 18(1) assigns the pension to Germany.	Germany only, under § 22 Nr. 5 EStG.
Non-citizen resident of Germany; lump sum	0 percent: no lump-sum carve-out in the German treaty; claim Article 18(1), or Article 21 for a contributory IRA.	Germany only; from 2025 in full for a tax-favored plan.
Non-citizen resident of Germany; contributory IRA not connected with employment	0 percent: Article 21 (other income) if Article 18(1) does not apply.	Germany only.
U.S. Social Security to a resident of Germany	0 percent: Article 18(5).	Germany only, as a statutory pension (§ 22 Nr. 1 sentence 3(a)(aa) EStG).
U.S. citizen resident in Germany	Section 3405, not Section 1441; Form 1099-R; saving clause.	Both; Germany credits nothing, the United States credits the German tax with resourcing (Article 23(5)).
No treaty claim on file	30 percent under Section 1441, a final tax until reclaimed on Form 1040-NR with an ITIN.	United States now and Germany later; § 32d(5) EStG does not credit tax the treaty does not permit.

[11] Article 1(4) and Article 23(5)(a) to (c) of the income tax treaty (Germany credits only the U.S. tax that the treaty allows against a resident of Germany who is not a U.S. citizen; the United States credits the German tax after that credit; income deemed to arise in Germany to the extent necessary); IRC § 904; Treas. Reg. § 1.904-6(b); Form 1116 (income resourced by treaty); IRC § 3405 and Form 1099-R for the citizen payee.

Part III. The German Side: § 22 Nr. 5 EStG Before and After 2025

Characterization: other income from a pension arrangement

Germany taxes its residents on their worldwide income, and a U.S. retirement distribution is within the German income tax. The tax administration and the courts characterize distributions from U.S. defined contribution plans as other income under § 22 Nr. 5 EStG, the provision that governs benefits from pension arrangements, and not as investment income or as a return of capital. The Bundesfinanzhof settled the characterization of the 401(k) on June 25, 2025: a plan qualified under Section 401(a) of the Code is structurally comparable to the external vehicles of German occupational pensions, the Pensionsfonds, the Pensionskasse, and the Direktversicherung of § 1b of the Occupational Pensions Act, a comparability that Germany itself recognized in the 2006 Protocol to the income tax treaty, which lists Section 401(a) plans among the arrangements corresponding to German ones; distributions are therefore taxed under § 22 Nr. 5 sentence 2(b), which refers to the life insurance rule of § 20(1) Nr. 6 EStG, and not under the residual rule of sentence 2(c) that the lower court had applied.[12]

The IRA is less settled. The tax administration and the lower courts apply the same framework to a traditional IRA, and a rollover IRA funded from a 401(k) follows the plan it came from on any reasonable view; and the 2006 Protocol lists individual retirement plans alongside qualified plans among the U.S. pension arrangements it recognizes; but the Bundesfinanzhof has not decided the point, and the view exists in the literature that an IRA, which is a custodial account rather than a pension institution, is transparent for German purposes, so that its dividends, interest, and gains are taxed to the German resident currently under § 20 EStG at the flat rate as they arise, and the later distribution is not a taxable event at all. The prevailing practice is § 22 Nr. 5, and this article proceeds on it; the alternative should be noted in the file, because it changes both the timing and the amount of the German tax.[13]

The pivot: full taxation under sentence 1 or difference taxation under sentence 2

Within § 22 Nr. 5 everything turns on one distinction. Sentence 1 imposes full deferred taxation (nachgelagerte Besteuerung): the entire distribution, returned contributions and earnings alike, is taxable at the beneficiary's progressive rate, which reaches 42 percent at about €70,000 of taxable income and 45 percent at about €278,000, plus solidarity surcharge. Sentence 2 imposes difference taxation: for a capital payment, only the excess of the payout over the contributions, and for a lifelong annuity only the age-based Ertragsanteil of § 22 Nr. 1 sentence 3(a)(bb), 18

[12] § 22 Nr. 5 sentences 1 and 2(b) EStG; § 1b(2) and (3) of the Occupational Pensions Act (BetrAVG); BFH of June 25, 2025, X R 23/22 (headnote: payments from a plan under Section 401(k) of the U.S. Internal Revenue Code made before January 1, 2025 are taxable under § 22 Nr. 5 sentence 2(b) EStG on account of the structural comparability, recognized by the Federal Republic of Germany, with the vehicles named in § 1(1) and § 1b(2) and (3) BetrAVG); Protocol of June 1, 2006 to the income tax treaty, paragraph 16(a) of the Protocol to the Convention (listing, for the United States, qualified plans under Section 401(a), individual retirement plans including IRAs, Section 408(p) accounts, and Roth IRAs under Section 408A, and Section 403(a), 403(b), and governmental 457(b) plans, and, for Germany, arrangements under § 1 of the Occupational Pensions Act, as the pension plans to which Article 18A applies).

[13] On the treatment of IRAs, the German tax administration's practice and the decisions of the fiscal courts apply § 22 Nr. 5 EStG; the Bundesfinanzhof has not decided the point; on the transparency view, the literature on custodial accounts and § 39 AO; § 20(1) Nos. 1 and 7 and § 32d EStG for the alternative.

percent of each payment for an annuity beginning at 65. The dividing line is whether the contributions were tax-favored (gefördert) in the accumulation phase: contributions that were exempt or deductible belong under sentence 1, contributions made from taxed income under sentence 2.[14] Through 2024 the catalogue of tax favors in sentence 2 was German: exemption under § 3 Nr. 63 EStG, the special expense deduction, the Riester allowances. Contributions to a U.S. plan by a client who was not a German taxpayer when she made them received none of these, and were therefore not tax-favored in the German sense, whatever the United States had done.

Through 2024: the Bundesfinanzhof's decision

The decision of June 25, 2025 concerned a German employee seconded to the United States from 1999 to 2007 who contributed to a 401(k) pre-tax and received a single distribution in 2015 after her return. The court held that the distribution was not within sentence 1, because the U.S. exemption of the contributions was not a favor listed in the statute, and that it fell under sentence 2(b), which taxes the plan like a life insurance contract under § 20(1) Nr. 6 EStG in the version applicable to the contract: for a plan begun after December 31, 2004, the difference between the payout and the contributions, halved where the payment is made after the beneficiary's sixtieth birthday, or sixty-second for a plan begun after 2011, and after twelve years from the start; for a plan begun before January 1, 2005, the old law, under which the payment is exempt altogether after twelve years and the other conditions of the former § 20(1) Nr. 6 sentence 2 EStG.[15] The court remanded for findings on the start date and the terms of the plan and placed the burden of proving them on the taxpayer. For distributions through 2024 the headline is therefore that a U.S.-funded plan was taxed in Germany on its growth, on half of it after age 60 or 62 and twelve years, and, for the oldest plans, possibly on nothing; the headnote confines the holding, in terms, to payments made before January 1, 2025.

From 2025: full taxation of the tax-favored plan

The Annual Tax Act 2024 of December 2, 2024 reversed the result for later years. It added to the catalogue in § 22 Nr. 5 sentence 2 contributions to a foreign pension institution for which a comparable exemption or favor was granted under German taxation or the taxation of another State, and the amendment applies for the first time to the 2025 assessment period.[16] Pre-tax contributions to a 401(k) and deductible contributions to a traditional IRA were exempt or deductible under

[14] § 22 Nr. 5 sentence 1 EStG (full taxation of benefits from pension arrangements whose contributions were tax-favored under § 3 Nr. 63, § 10a, or Section XI of the Act); sentence 2 (where the contributions were not so favored, taxation under (a) the Ertragsanteil rule of § 22 Nr. 1 sentence 3(a)(bb) for lifelong annuities, (b) the life insurance rule of § 20(1) Nr. 6 for capital payments from comparable arrangements, and (c) the difference rule for other cases); § 32a(1) EStG (rate scale 2026: 42 percent from about €69,000 and 45 percent from about €278,000); § 22 Nr. 1 sentence 3(a)(bb) (Ertragsanteil table: 18 percent at age 65).

[15] BFH of June 25, 2025, X R 23/22, reasons; § 20(1) Nr. 6 sentences 1 and 2 EStG (contracts concluded after December 31, 2004: the difference between the benefit and the contributions; half of the difference where the benefit is paid after the sixtieth birthday, or the sixty-second for contracts concluded after December 31, 2011, and after twelve years from conclusion); § 20(1) Nr. 6 EStG in the version applicable to contracts concluded before January 1, 2005 in conjunction with the transitional rule of § 52(28) EStG (exemption after twelve years subject to the former conditions, including a minimum contribution period); on the burden of proof, § 90(2) AO (increased duty of cooperation in foreign matters).

[16] Annual Tax Act 2024 (Jahressteuergesetz 2024) of December 2, 2024, Bundesgesetzblatt 2024 I No. 387, Article 4 No. 6(a) (amendment of § 22 Nr. 5 sentence 2 EStG to include contributions to a foreign pension institution for which a comparable exemption or favor was granted under German taxation or the taxation of another State); § 52(1) EStG (first application for the 2025 assessment period); Bundestag printed paper 20/12780 (explanatory memorandum: prevention of a double favor).

U.S. law; from 2025 they are tax-favored in the German sense, the plan leaves sentence 2, and the distribution is taxed under sentence 1 in full, contributions and earnings, at the progressive rate. The stated purpose is to end the double favor in which the same money went in untaxed in the United States and came out lightly taxed in Germany. The practical effect is severe and abrupt: the engineer's $2 million, taxed on its growth alone in 2024, is taxed on its whole value in 2026, and distributions from the same account in 2024 and 2025 are taxed on different bases. Nor is there rate relief. The Bundesfinanzhof held on October 30, 2025 that a lump sum from an occupational pension arrangement taken under a free election between an annuity and a capital payment is not extraordinary income under § 34(2) Nr. 4 EStG and does not qualify for the one-fifth rule that spreads a multi-year payment over five years for rate purposes; a 401(k) lump sum, which is always the product of such an election, is taxed at the full progressive rate in the year received.[17] The employer contributions, and the question whether contributions the employee made from taxed income in a year in which she was a German taxpayer are still outside the favor, are details the amendment leaves to the file; the burden of proving the contribution history is the taxpayer's.

What remains: the Roth account, the annuity, and the timing

Three levers survive the amendment. The first is the Roth account. Contributions to a Roth IRA and to the Roth portion of a 401(k) are made from taxed income and receive no exemption or deduction in the United States, so that they are not tax-favored in the sense the amendment targets and the distribution stays under sentence 2: Germany taxes at most the earnings, halved after age 62 and twelve years, and the contributions come back untaxed. Germany does not honor the U.S. rule that a qualified Roth distribution is wholly exempt, and the earnings are taxed; but the German result is materially better than the full taxation of a traditional plan, and it makes the traditional-or-Roth choice, and any Roth conversion, a cross-border decision in which the client's likely residence at distribution is the largest variable.[18] The second is the form of the distribution within sentence 2: a lifelong annuity is taxed only on the Ertragsanteil, while a capital payment is taxed on the whole difference, so that for a Roth or a nondeductible account the annuity form reduces the German base by four fifths; for a traditional plan under sentence 1 the choice affects only timing and rate, the whole being taxable either way.[19] The third, and after 2025 the largest, is timing relative to the move. A lump sum taken, or a Roth conversion completed, while the client is still a U.S. resident and not yet a German one is taxed in the United States at the client's ordinary rates and is outside German tax altogether, because Germany taxes a resident's income from the day of arrival and not before; the same lump sum taken in Munich a year later is taxed in Germany in full at up to 45 percent and, under the treaty, not at all in the United States. For the returning German the

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[17] BFH of October 30, 2025, X R 25/23 (headnote: capital payments from an occupational pension arrangement that rest on the exercise of a free election between annuity and capital are not extraordinary income under § 34(2) Nr. 4 EStG); § 34(1) and (2) Nr. 4 EStG (one-fifth rule for multi-year remuneration); § 22 Nr. 5 sentence 1 EStG.

[18] IRC § 408A (Roth IRA: contributions not deductible; qualified distributions excluded), § 402A (designated Roth accounts); § 22 Nr. 5 sentence 2(b) EStG in conjunction with § 20(1) Nr. 6 EStG (contributions from taxed income; the difference, halved after age 62 and twelve years); the U.S. exclusion of a qualified Roth distribution is not a German exemption, § 2(1) EStG and the treaty's allocation to Germany.

[19] § 22 Nr. 5 sentence 2(a) EStG in conjunction with § 22 Nr. 1 sentence 3(a)(bb) (Ertragsanteil by age at commencement, e.g., 22 percent at 60, 18 percent at 65, 15 percent at 70); sentence 2(b) for capital payments; the annuity form is available where the plan or a rollover into an annuity contract provides it.

year of departure is the year in which the account should be reviewed, and for the American retiring to Germany the conversion should be run before the flight.[20]

A theme runs through the German rules: the burden of proof is on the beneficiary. To obtain sentence 2 treatment, to establish the contribution total that is subtracted from the payout, to separate pre-tax from after-tax and Roth amounts in a mixed account, to prove the start date of the plan and the age and twelve-year conditions, and now to show which contributions received a U.S. favor and which did not, the German taxpayer must produce plan documents, contribution records, and U.S. tax information to the Finanzamt, records that are often decades old and held by a former employer's administrator.[21] Assembling the file before distributions begin is the task the U.S. adviser is best placed to perform, and it is frequently the difference between being taxed on the growth and on the whole.

Plan and distribution	German rule (§ 22 Nr. 5 EStG)	What Germany taxes
Traditional 401(k) or deductible IRA, distributed through 2024	Sentence 2(b) (BFH X R 23/22 of June 25, 2025), referring to § 20(1) Nr. 6 EStG.	Plan begun after 2004: payout minus contributions, halved after age 60 (62) and twelve years; plan begun before 2005: possibly nothing after twelve years.
Traditional 401(k) or deductible IRA, distributed from 2025	Sentence 1 (Annual Tax Act 2024: foreign tax favor counts).	The full distribution at progressive rates up to 45 percent; no § 34 EStG relief for a chosen lump sum (BFH X R 25/23).
Roth IRA or Roth 401(k)	Sentence 2(b): after-tax contributions are not tax-favored.	Earnings only, halved after age 62 and twelve years; contributions untaxed; U.S. exemption of qualified distributions not honored.
Nondeductible traditional contributions (Form 8606 basis)	Sentence 2 as to that portion.	Earnings only on the after-tax portion; document the basis.
Lifelong annuity form, within sentence 2	Sentence 2(a): Ertragsanteil under § 22 Nr. 1 sentence 3(a)(bb).	A fixed percentage of each payment by age at commencement, 18 percent at 65.
U.S. Social Security	§ 22 Nr. 1 sentence 3(a)(aa) (Article 18(5) of the treaty).	The cohort-based taxable portion of a statutory pension, above 80 percent for pensions beginning after 2020.

[20] § 1(1) EStG and §§ 8, 9 AO (unlimited liability from the establishment of a residence or habitual abode; § 2(7) EStG on the year of arrival, income before arrival taxed only under limited liability if German source); IRC § 408(d), § 402(a), § 408A(d)(3) (Roth conversion taxable in the year of conversion); Article 4 of the income tax treaty (a person who has ceased to be resident in Germany, or has not yet become resident, is not a resident of Germany for the treaty).

[21] § 90(2) AO (duty of cooperation and of procuring evidence in matters with a foreign connection); § 22 Nr. 5 sentence 7 et seq. EStG (certification requirements for domestic providers, which foreign plans do not meet); Form 8606 (basis in nondeductible IRA contributions); plan statements and Forms W-2 (box 12 codes D and AA) for the pre-tax and Roth components.

Part IV. The Interaction of the American and German Taxation

With both systems in view, the question is whether the beneficiary is taxed once or twice, and the answer depends on her status and on whether the U.S. withholding was in fact reduced to nothing. In the clean case, a non-citizen resident of Germany with the treaty claim perfected, the United States withholds nothing and Germany taxes the distribution under § 22 Nr. 5, in full for a tax-favored traditional plan distributed from 2025 and on the earnings for a Roth or a nondeductible account. There is one tax, and it is German. The residual risk is procedural: a custodian that withholds 30 percent despite the form has produced a cash-flow double tax that lasts until the Form 1040-NR refund arrives, and Germany, which credits foreign withholding under § 32d(5) EStG only up to the rate the treaty permits, credits none of it, so that the refund is the beneficiary's only remedy.[22] For the U.S. citizen in Germany the saving clause makes both countries tax, and Article 23(5) puts the credit on the U.S. return; the beneficiary bears the higher of the two taxes, which since 2025 is usually the German one, provided the credit is computed with the resourcing election.

Two illustrations. Frau A, a German national, worked sixteen years for a contractor in Northern Virginia, contributed to a 401(k) pre-tax, rolled part of it into an IRA, and retired to Munich in 2025 as a German resident and not a U.S. citizen. If she takes monthly payments from 2026, the United States withholds nothing on her Form W-8BEN, and Germany taxes each payment in full under sentence 1 at her progressive rate; had she taken a lump sum in December 2024, in Fairfax, before her German residence began, the United States would have taxed it at her ordinary rates as a resident and Germany would have taxed nothing; had she taken it in Munich in 2024, Germany would have taxed the growth alone, halved, because she was over 62 and the plan was more than twelve years old. Herr B, in the same position but holding a Roth IRA he converted in 2019 while living in Maryland: the United States withholds nothing and taxes nothing, and Germany taxes at most the earnings since conversion, halved after twelve years from the conversion, the converted amount being an after-tax contribution. The two clients, identical but for the account type and the calendar, face German taxes that differ by a multiple.

Part V. The Inherited Account: A German Heir Inherits an IRA or 401(k)

When a beneficiary resident in Germany inherits a U.S. retirement account, three layers appear, and they stack. The first is the U.S. estate tax, and the estate tax treaty usually removes it. The account of a decedent who was not a U.S. citizen and was domiciled in Germany under Article 4 is, under Article 9, taxable only in Germany, the account being neither real property nor business property nor a partnership interest; Form 706-NA is filed with a treaty position, nothing is taxed, and the pro rata unified credit of Article 10(5) is not reached. Where the decedent was a U.S. citizen or a U.S. domiciliary, the account is in the gross estate on Form 706 against the $15 million exclusion, the estate tax attributable to it is deductible by the recipient under Section 691(c) as the distributions are taxed, and Germany, taxing the German heir under Article 11(1)(b), credits the U.S. tax under Article

[22] § 32d(5) EStG (credit of foreign withholding limited to the tax that could be levied under the treaty; no credit for tax withheld contrary to the treaty); Article 23(3)(b) of the income tax treaty; IRC § 1464 and Form 1040-NR.

11(3)(b).[23] The second layer is the German inheritance tax. Where the decedent or the heir is a German resident, the acquisition of the account is taxed on its date-of-death balance in the heir's class, class I for a spouse or child with allowances of €500,000 and €400,000 at 7 to 30 percent, and the income tax that will later fall on the distributions is not deducted from the value, the Bundesfinanzhof having held that a latent income tax burden on an inherited claim is not a debt of the estate.[24] The third layer is the German income tax on the distributions: the account is income in respect of a decedent, takes no step-up under Section 1014(c) on the U.S. side, and the heir who draws on it is taxed under § 22 Nr. 5 EStG exactly as the participant would have been, in full under sentence 1 for a tax-favored plan from 2025, so that the same account bears German inheritance tax at death and German income tax as it is drawn. § 35b EStG softens the coincidence: where income was subject to inheritance tax as an acquisition on death in the same year or the four preceding years, the income tax on it is reduced by the proportion the inheritance tax bore to the taxable acquisition; the relief must be claimed, applies only within the five-year window, and is the reason the drawdown schedule should be set with the inheritance tax assessment in hand.[25]

The U.S. overlay is the SECURE Act. A designated beneficiary who is not the spouse, a minor child, disabled, chronically ill, or within ten years of the decedent's age must empty the inherited account by the end of the tenth year after the year of death, with annual minimum distributions in the meantime where the decedent had reached the required beginning date; a surviving spouse may roll the account into her own IRA and defer, and an estate or a trust that fails the see-through rules is limited to five years or the decedent's remaining life expectancy.[26] Each distribution to the German heir is a distribution to a nonresident alien, withheld upon at 0 percent on the treaty claim, and taxed in Germany at progressive rates; spreading the drawdown across the ten years, so that no year spikes into the 45 percent bracket and the § 35b window is used, is the core income tax move, and it is coordinated with the inheritance tax assessment and the custodian's willingness to maintain an inherited account for a foreign beneficiary at all, which should be confirmed while the participant is alive.

[23] Articles 4, 9, and 10(5) of the estate tax treaty; Form 706-NA with a treaty-based return position under IRC § 6114; IRC § 2010(c) ($15,000,000 for 2026 under Pub. L. 119-21, § 70106, indexed thereafter), § 2001; § 691(c) (deduction for estate tax attributable to income in respect of a decedent); Article 11(1)(b) and (3)(b) of the estate tax treaty; § 21 ErbStG.

[24] § 2(1) No. 1, § 3(1) No. 4, § 12 ErbStG and § 12 BewG (valuation of claims at face); § 15, § 16(1) Nos. 1 and 2, § 19(1) ErbStG; BFH of February 17, 2010, II R 23/09, BStBl. II 2010, 641 (the income tax that will later be triggered on inherited income claims is not deductible as a debt of the estate); § 30 ErbStG (notice within three months).

[25] IRC § 691(a), § 1014(c) (no step-up for income in respect of a decedent); § 22 Nr. 5 EStG; § 35b EStG (reduction of the income tax on income that was subject to inheritance tax as an acquisition on death in the same or the four preceding assessment periods, by the percentage that the inheritance tax bears to the taxable acquisition plus the allowances; on application); on the application of § 35b to distributions from an inherited foreign pension arrangement, the provision's wording covers income "that has been subject to inheritance tax as an acquisition on death," which the account's value was; the point should be raised in the return.

[26] IRC § 401(a)(9)(H) as added by the SECURE Act of 2019 (ten-year rule for designated beneficiaries who are not eligible designated beneficiaries; exceptions for the surviving spouse, minor children, disabled and chronically ill beneficiaries, and beneficiaries not more than ten years younger); Treas. Reg. § 1.401(a)(9)-5(d) and (e) (final regulations of July 2024: annual distributions within the ten-year period where the employee died on or after the required beginning date); § 402(c)(9) (spousal rollover); § 401(a)(9)(B)(ii) (five-year rule for non-designated beneficiaries); Article 18(1) of the income tax treaty for each distribution to the heir.

Part VI. Practice Points

1. **Fix the beneficiary's status first.** A non-citizen resident of Germany gets full treaty relief: 0 percent U.S. withholding and German tax only. A U.S. citizen in Germany is taxed by both under the saving clause and relieved by the Article 23(5) credit on the U.S. return. The whole coordination differs.

2. **Perfect the treaty claim before the first distribution, without waiting for an ITIN.** Form W-8BEN claiming Article 18(1), or Article 21 for a contributory IRA, with the German Steuer-Identifikationsnummer on line 6; confirm that the custodian honors treaty claims and remits abroad, and move the account if it does not. The ITIN is for the refund on Form 1040-NR, not for the claim.

3. **Read the German rule for the year of distribution.** Through 2024, difference taxation under sentence 2, halved after age 60 or 62 and twelve years, possibly nothing for a plan begun before 2005; from 2025, full taxation under sentence 1 for a plan whose contributions were exempt or deductible in the United States, without § 34 relief for a lump sum.

4. **Time the move and the distribution together.** A lump sum or a Roth conversion completed while the client is still a U.S. resident is outside German tax; the same amount after the move is taxed in full. Review every account in the year of departure.

5. **Treat the Roth as a cross-border asset.** It stays under sentence 2: earnings only, halved after twelve years. Evaluate the traditional-or-Roth choice and any conversion on the client's likely residence at distribution.

6. **Weigh the annuity against the lump sum on the German base.** Within sentence 2 a lifelong annuity is taxed on the Ertragsanteil alone, 18 percent at 65; a capital payment on the whole difference. Under sentence 1 the form affects only timing and rate.

7. **Assemble the contribution history now.** Plan documents, the start date, contribution records by year, employer and employee shares, pre-tax, after-tax, and Roth components, Form 8606 basis, and the U.S. returns; the German burden of proof is the beneficiary's and the records are on the U.S. side.

8. **Note the IRA question in the file.** The prevailing practice taxes IRA distributions under § 22 Nr. 5; the transparent-account view under § 20 EStG exists and is undecided by the Bundesfinanzhof.

9. **Run the death under the estate tax treaty before the Code.** A German-domiciled non-citizen's account is taxable only in Germany under Article 9; a citizen's account is on Form 706 with § 691(c) relief and the Article 11(3)(b) credit in Germany.

10. **Plan the drawdown of an inherited account with the inheritance tax assessment.** Ten years under the SECURE Act, 0 percent withholding on the treaty claim, progressive German rates on each distribution, and § 35b relief only within five years of the inheritance tax; confirm that the custodian will hold an inherited account for a foreign beneficiary.

Conclusion

A U.S. retirement account payable to a beneficiary in Germany is a modest asset wrapped in two tax systems, and the outcome ranges from a single German tax the client can plan for to a cash-flow double charge reconciled years too late. The U.S. side is settled and, under the treaty, quiet: a distribution to a nonresident alien is withheld upon at 30 percent by statute, but Article 18 assigns the pension to Germany, the German tax number now carries the claim, and a non-citizen German resident with a Form W-8BEN on file should see nothing withheld, while a U.S. citizen in Germany is taxed by both countries and relieved by the credit on the U.S. return. The German side is where the tax is decided, and the ground has shifted beneath it: through 2024 a U.S.-funded plan was taxed on its growth, on half of it, or on nothing; from 2025 a plan whose contributions were favored in the United States is taxed on the whole, at the full progressive rate, with no relief for a lump sum. What remains is the Roth account, the annuity, and above all the calendar, since a distribution taken before the move is outside German tax and a distribution taken after it is inside in full. On death the estate tax treaty removes the U.S. estate tax from a German domiciliary's account, and Germany taxes the heir twice on the same account, at death and as it is drawn, with § 35b as the bridge. The through-line for the adviser is that the treaty claim, the German characterization, the documentation, the timing, and the death are a single problem, and that, handled in order and under the rules as they now stand, the account passes to a beneficiary in Germany taxed once, at a rate the client saw coming.

Contact

Whether a U.S. IRA or 401(k) reaches a beneficiary in Germany taxed once or twice turns on the treaty claim and the custodian, on the German rule for the year of distribution, on the Roth, annuity, and timing levers that survive the 2025 amendment, on the contribution record the Finanzamt will demand, and, on death, on the estate tax treaty, the German inheritance tax, and § 35b EStG. **Ashford International Law PC advises families, fiduciaries, and their advisers** across the whole map: the Article 18 or Article 21 claim on Form W-8BEN with the German tax number, custodian selection and the Form 1040-NR refund, the Article 23(5) computation for a U.S. citizen in Germany, the § 22 Nr. 5 EStG analysis under the Bundesfinanzhof's 2025 decisions and the Annual Tax Act 2024, the Roth conversion and lump-sum timing before a move, the annuity election, the assembly of the contribution file, and the coordination of an inherited account under the estate tax treaty, the SECURE Act, and § 35b, alongside the family's existing advisers or leading the U.S. side end to end.

The firm is led by **Caroline Esche Ashford, PhD, JD**. A graduate of Columbia University Law School, she is a dual-qualified attorney whose practice focuses on German-American estate planning and the cross-border taxation and administration of estates and trusts, including U.S. retirement accounts held or inherited by residents of Germany and the interaction of the Germany–U.S. income and estate tax treaties with German domestic law. Dr. Esche Ashford is also licensed to practice law in Germany; she is a member of the Munich bar.

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#IRAtaxationinGermany #401ktaxationinGermany #RothIRAtaxationinGermany #RothConversion #GermanyUSA #Section1441 #Section3405 #FormW8BEN #GermanTaxNumber #Form1042S #Form1040NR #IncomeTaxTreatyGermany #Article18taxtreatygermany #Article21 #Article23 #SavingClause #Section22EStG #NachgelagerteBesteuerung #Ertragsanteil #XR2322 #XR2523 #Jahressteuergesetz2024 #Section35bEStG #Erbschaftsteuer #GermanyEstateTaxTreaty #Article9 #Section691 #SECUREAct #GermanyTenYearRule #InternationalEstatePlanning