The Ten-Year Rule of Article 4(3) of the Germany-United States Estate and Gift Tax Treaty

A Guide for Americans Moving to Germany to the treaty period and what starts it; the three conditions and the citizenship that defeats them; what each country may tax before and after the eleventh year; the beneficiary in Germany whom the rule does not protect; gifts, the non-citizen spouse, and the trust that becomes a taxpayer; the relief provisions of Article 11 and § 21 ErbStG; a worked example at year six and at year twelve; and the steps to take before the period runs out.

German inheritance and gift tax does not ask about a passport or a visa. It asks whether the person is an Inländer, and a dwelling kept available in Germany answers that question from the day the keys change hands. An American who takes an apartment in Munich is inside the German system at once, on the whole of a worldwide transfer, with no domestic tie-breaker to appeal to and no grace period written into the statute.

The estate and gift tax treaty supplies both. It resolves the double domicile that the two domestic laws create, and for a citizen of one country living in the other it goes further, deeming that person domiciled at home for as long as ten years. The rule is real, it is valuable, and it is narrower than almost everyone who relies on it believes.

The mistake this guide exists to prevent is the assumption that a ten-year rule exists for Americans in Germany and that it applies to you. Article 4(3) of the Convention of December 3, 1980 does not protect Americans as such. It protects a citizen of one Contracting State who is *not also* a citizen of the other.[1] If you hold German citizenship as well as American, whether by birth to a German parent, by restoration, or by naturalisation, the paragraph never reached you, and Germany taxes your worldwide estate from your first German day. If you are a permanent resident rather than a citizen, it does not reach you either.

Even where the rule applies, it does three things and no more. It confines Germany, for a decade, to German real property and German business property. It does not shelter a beneficiary who lives in Germany in a household of her own. And it says nothing at all about income tax, which attaches from the first day and which is what actually costs money in year one.

This guide sets out where the German charge comes from and where the ten years come from; the three conditions of Article 4(3) and the citizenship condition that decides most cases; what each country may tax inside the period and after it; the beneficiary in Germany whom the rule does not protect; gifts during the period; the position of a non-citizen spouse; the relief provisions of Article 11 of the treaty and § 21 of the German Inheritance and Gift Tax Act; a worked example run at year six and again at year twelve; the other ten-year periods that meet Americans in Germany and are constantly confused with this one; and the

[1] Article 4(3)(a) 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. The condition is tested "at his death or at the making of a gift."

practical steps. Statuses of statutes, treaty provisions, decisions, thresholds and allowances are stated as of September 2026 and must be confirmed before any decision is taken.

Summary

(1) German inheritance and gift tax attaches on residence, not on a visa or a registration: a dwelling kept available in Germany makes you an Inländer under § 2(1) No. 1 ErbStG from the day it is available, and German law has no tie-breaker of its own.

(2) Article 4(3) of the estate and gift tax treaty deems you domiciled in the United States rather than Germany if you are a citizen of one country and not also a citizen of the other, are domiciled in both, and have been domiciled in the other for not more than ten years; the Protocol of December 14, 1998 raised the period from five years to ten.

(3) While the period runs Germany may tax your estate and your gifts only on German real property, German business property and Article 8 partnership interests; Article 9 allocates everything else to the United States.

(4) The rule is for citizens of one country only. A dual United States and German national is outside it from the first day; naturalisation ends it on the day of the certificate, and since June 27, 2024 an American can become German after five years without surrendering the American passport; a permanent resident who is a citizen of neither country never had it.

(5) The rule does not protect a beneficiary who lives in Germany in a household of her own: Article 11(1)(b) preserves the German charge on her, and the Bundesfinanzhof so held on September 20, 2022 in II B 2/22.

(6) The rule does nothing for income tax, which attaches from the first German day, and nothing for § 15 AStG, which attributes the income of a foreign trust to a German-resident settlor from his first year.

(7) Where both countries tax, the relief is a credit and not an exemption: Article 11(2) and (3) decide which country credits the other, § 21 ErbStG fills the gaps for state taxes, and a credit is worth the tax actually paid, which for an estate below the United States exclusion is nothing.

(8) The period ends without warning in the eleventh year, and a revocable trust that continues after death becomes a class III acquirer under § 3(2) No. 1 sentence 2 ErbStG at that moment: on the worked example in Part X the same estate bears about €329,000 of German tax at year six and about €4,583,000 at year twelve.

Part I. Where the German charge comes from, and where the ten years come from.

Unlimited German inheritance and gift tax liability, which reaches the worldwide transfer, arises under § 2(1) No. 1 of the Inheritance and Gift Tax Act if the decedent, the donor, or the acquirer is an Inländer at the relevant moment.[2] An Inländer is a person with a residence (Wohnsitz) or a habitual abode (gewöhnlicher Aufenthalt) in Germany. A Wohnsitz under § 8 of the Fiscal Code is a dwelling kept and used in circumstances indicating that it will be retained and used; a furnished apartment held available in Munich is a Wohnsitz from the day it is available, whether or not the resident has registered with the Einwohnermeldeamt and whether or not much of the year is spent in it. A habitual abode under § 9 arises after roughly six months of continuous presence.[3]

German law contains no tie-breaker of its own. A person can be resident in Germany and domiciled in Massachusetts at the same moment, and for German domestic purposes simply is. Both systems then reach the same transfer, and the conflict is left to the treaty.

The treaty resolves it, and for an American it does more. Article 4(1) gives an individual a domicile in the United States if he is a resident *or a citizen* of it, and a domicile in Germany if he has a Wohnsitz or habitual abode there or is otherwise subject to unlimited German inheritance and gift tax.[4] Article 4(2) resolves a double domicile through a cascade: permanent home, then centre of vital interests, then habitual abode, then citizenship, and where the individual is a citizen of both States or of neither, by agreement of the competent authorities.[5] Article 4(3) then displaces that cascade in one situation. Where an individual, at his death or at the making of a gift, was a citizen of one Contracting State and not also a citizen of the other, was domiciled in both under paragraph 1, and had been domiciled in the other Contracting State for not more than ten years, his domicile, and that of the members of his family forming part of his household and fulfilling the same requirements, is deemed to be in the State of which they were citizens.[6]

What follows is Article 9. Property of a decedent or donor domiciled in one country is taxable only in that country, apart from the real property, business property and partnership interests that Articles 5, 6 and 8 assign to the country where they lie.[7] So while the period runs you are a United States domiciliary for treaty purposes, and Germany reaches your transfers only on what is physically German. The brokerage account, the retirement accounts, the closely held stock and the house kept at home are outside the German charge, however large they are and whatever your German bank knows about them.

Part II. The three conditions.

Article 4(3) imposes three conditions, and each is a place where the rule fails for people who assume it is theirs.

You must be a citizen of one Contracting State and not also a citizen of the other. This is the condition that decides most cases, and Part III is devoted to it.

You must be domiciled in both countries under Article 4(1). For an

[2] § 2(1) No. 1 sentence 1 ErbStG. The tax is assessed against the acquirer, § 20(1) ErbStG.

[3] §§ 8 and 9 of the German Fiscal Code (Abgabenordnung); Inheritance Tax Guidelines (ErbStR) R E 2.1. Registration under the Bundesmeldegesetz is evidence, not the test.

[4] Article 4(1)(a) and (b) of the estate and gift tax treaty.

[5] Article 4(2)(a) to (d) of the treaty.

[6] Article 4(3)(a) to (c) of the treaty. The period was five years in the Convention as signed on December 3, 1980 and was extended to ten by the Protocol of December 14, 1998.

[7] Articles 5, 6, 8 and 9 of the treaty. Article 7 deals with tangible movable property; Article 9 is the residual rule for everything else.

American this takes care of itself. Article 4(1)(a) gives a United States domicile to a resident *or a citizen*, so citizenship alone supplies the American side for as long as it is held, whatever has become of the house at home. The German side arrives with the Wohnsitz. The double domicile the paragraph exists to resolve therefore comes into being on the day the German dwelling becomes available, and no enquiry into intention is required to produce it. The French estate tax treaty asks in addition for a clear intention to retain the American domicile; the German treaty does not, and a reader who has met the French rule should not import it.[8]

Your German domicile must not have lasted more than ten years. Note the wording: not more than ten, rather than less than ten. The paragraph measures the period of German domicile and does not provide that an interruption restarts the count, so a person who spent four years in Frankfurt in his thirties should not assume a fresh decade on his return. Establish the whole residence history before relying on the rule, and do not date it from the current lease.

Part III. Who the rule does not reach.

The commonest and most expensive error in this area is made by German-American families, who hear of a ten-year rule for Americans in Germany and assume it covers them. It does not. Dual nationality removes the rule entirely, and it removes it from the first day rather than in the eleventh year. The table sets out the statuses that recur.

Table 1. Article 4(3) by citizenship status

Your status	Does Article 4(3) apply	What that means while you live in Germany
United States citizen, not a German citizen	Yes, while your German domicile has lasted not more than ten years	You are deemed domiciled in the United States. Germany reaches only German real property, German business property, and Article 8 partnership interests
Citizen of both the United States and Germany	No. The paragraph excludes a citizen who is also a citizen of the other State	You fall back on the Article 4(2) cascade. With a permanent home in Germany your domicile is German from the first day and Germany taxes your worldwide estate and gifts. Where the cascade reaches the citizenship step and both passports are held, the case goes to the competent authorities, which is not a planning position
United States citizen who naturalises in Germany	Only until the certificate. The condition is tested at the death or at the making of the gift	The period closes on the day you become German, in whatever year of the ten you happen to be. A gift made the week before is within the rule; a gift made the week after is not

[8] Compare Article 4(3) of the Convention between the United States of America and the French Republic for the Avoidance of Double Taxation with Respect to Taxes on Estates, Inheritances and Gifts of November 24, 1978, as amended, which conditions the equivalent relief on a clear intention to retain the domicile of the State of citizenship and uses five-of-seven and seven-of-ten year measures.

Your status	Does Article 4(3) apply	What that means while you live in Germany
German citizen holding a United States green card, not a United States citizen	The paragraph applies, but it points the other way	It deems you domiciled in Germany, your State of citizenship. That is the opposite of shelter, and § 2(1) No. 1 sentence 2(b) ErbStG adds a German tail of five years, ten in relation to the United States, after German residence is given up
Permanent resident of the United States who is a citizen of neither country	No. You are not a citizen of a Contracting State	There is no treaty period at all. Germany reaches your worldwide estate from the first year of German residence
Spouse or child in your household, a United States citizen and not a German citizen	Yes. The deemed domicile extends to family members forming part of the household who fulfil the same requirements	They are treated as you are. A household member who also holds German citizenship, or who is not an American citizen, does not qualify even though you do

Two consequences follow. A family can contain people on both sides of this line at once, so that one spouse is within the rule and the other outside it and the two estate plans are not symmetrical. And naturalisation is a tax event in this narrow but expensive sense. Germany abolished the requirement to renounce a previous citizenship with effect from June 27, 2024, so an American may now become German and remain American, and the ordinary residence requirement under § 10 of the Nationality Act is five years, the three-year route for exceptional integration having been withdrawn in October 2025.[9] A great many Americans who arrived recently will become eligible at the point where half the treaty period is still unused. Whatever the decision, it should be taken with the estate plan open, and the gifts and trust changes that depend on the rule completed before the ceremony rather than after it.

Part IV. What each country may tax, before and after the eleventh year.

The allocation is by asset class and it changes once, abruptly, at the end of the period. Nothing about the transition is gradual.

Table 2. Allocation inside and outside the treaty period

What you hold or transfer	While the ten years run	From the eleventh year
German real property (Article 5)	Germany taxes. The United States taxes you as a citizen and credits the German tax (Article 11(2)(a))	Unchanged
German business property and permanent-establishment assets	Germany taxes. The United States credits	Unchanged

[9] § 10 of the Staatsangehörigkeitsgesetz (StAG) as amended by the Gesetz zur Modernisierung des Staatsangehörigkeitsrechts, in force June 27, 2024, which repealed the renunciation requirement of the former § 12 StAG; the accelerated three-year route was withdrawn with effect from October 2025. The residence requirement and the acceptance of multiple citizenship are stated as of September 2026.

What you hold or transfer	While the ten years run	From the eleventh year
(Article 6), and partnership interests in such property (Article 8)		
United States real property	The United States taxes. Germany does not	Both tax. Germany credits the United States tax (Article 11(3)(a))
United States securities, bank and retirement accounts, closely held stock, and everything else within Article 9	The United States taxes. Germany does not	Germany taxes first. The United States credits the German tax (Article 11(2)(b))
A lifetime gift of any of the above	Allocated the same way, by Articles 5 to 9	Allocated the same way
Anything received by a beneficiary who lives in Germany in a household of her own	Germany taxes her acquisition in full (Article 11(1)(b)), with the credit of Article 11(3)(b)	Unchanged
Your worldwide income	Germany taxes from the first day. There is no window	Unchanged

Part V. The beneficiary in Germany whom the rule does not protect.

German inheritance tax is a tax on the acquirer, and the acquirer's own residence is an independent ground of unlimited liability. The treaty preserves that charge expressly: under Article 11(1)(b) Germany may tax an acquisition by a beneficiary domiciled in Germany at the decedent's death as though the treaty did not exist, subject to the credit of Article 11(3)(b).[10]

A beneficiary tried the obvious argument, that the ten-year rule made her a United States domiciliary too, and lost. On September 20, 2022 the Bundesfinanzhof held that Article 4(3) is framed by reference to the decedent and extends only to family members who belonged to the decedent's household, not to an acquirer living in a household of her own, and that this holds even where Germany bases its taxing right on the acquirer's residence.[11] The decision is short and its consequence is large.

A child who has taken a job in Berlin is therefore a German taxpayer on the whole of what she receives from you, and on the whole of what she receives from American relatives who never set foot in Germany. She takes tax class I with an allowance of €400,000 and rates from 7 to 30 percent.[12] She must notify the competent German tax office in writing

[10] Article 11(1)(b) and Article 11(3)(b) of the treaty; § 2(1) No. 1 ErbStG for the domestic charge on the acquirer.

[11] BFH of September 20, 2022, II B 2/22 (headnote: Article 4(3) of the treaty is not applicable to an acquirer who did not belong to the decedent's household, even where Germany bases its taxing right under Article 11(1)(b) on the acquirer's residence). The taxpayer was a United States citizen who had moved to Germany in September 2011 and inherited from a United States-resident aunt in February 2015.

[12] § 15(1) ErbStG (tax classes); § 16(1) No. 2 ErbStG (children €400,000); § 19(1) ErbStG (class I rates). The full scale appears in Table 3.

within three months of learning of the acquisition, and the duty is hers personally: nothing the American executor files discharges it, and because no United States broker reports to Germany her notice is ordinarily the tax office's only source.[13] A spouse who moved to Germany with you is in a different position, because a spouse within your household is inside the deemed domicile. A child who has set up on her own is not.

Table 3. German rate scale, § 19(1) ErbStG

Taxable acquisition up to	Class I	Class II	Class III
€75,000	7%	15%	30%
€300,000	11%	20%	30%
€600,000	15%	25%	30%
€6,000,000	19%	30%	30%
€13,000,000	23%	35%	50%
€26,000,000	27%	40%	50%
above €26,000,000	30%	43%	50%

Two features of that scale matter to an American reader. The rate in the applicable band is applied to the whole taxable acquisition rather than to the slice within the band, so crossing a threshold by one euro raises the rate on everything. Against that, § 19(3) limits the jump: the additional tax produced by the higher band is collected only so far as it can be met out of one half of the amount exceeding the threshold where the rate is 30 percent or less, and three quarters of it where the rate is higher.[14]

Part VI. What the rule does nothing for: income tax.

The income tax treaty contains no counterpart to Article 4(3). Its Article 4 resolves dual residence by a similar cascade, and once a permanent home and centre of vital interests are in Germany the taxpayer is a German resident from the first year. The saving clause allows the United States to go on taxing its citizens as though the treaty did not exist, and Article 23(5) is the machinery that reconciles two countries taxing the same person on everything.[15]

What bites in year one is therefore the ordinary income tax, and four items surprise Americans most. American mutual funds and exchange-traded funds fall under the Investment Tax Act, which charges an annual

[13] § 30(1) and (2) ErbStG; § 31 ErbStG (return on request). § 33 ErbStG binds German banks and insurers only; failure to notify extends the assessment period under § 170(5) No. 1 AO and may constitute an offence under §§ 370, 378 AO.

[14] § 19(1) and (3) ErbStG. The hardship rule is applied automatically by the tax office; it is worked through on real figures in Part X.

[15] Article 1(4) (saving clause), Article 4 and Article 23(5) 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 of August 29, 1989, as amended by the Protocol of June 1, 2006.

notional return, the Vorabpauschale, whether or not the fund distributes anything.[16] Interest on municipal bonds, exempt at home, is fully taxable German capital income. Investment income is charged at 25 percent plus the solidarity surcharge, and it is charged on gains measured in euros, so an exchange-rate movement can produce a German gain on a position that lost money in dollars.[17] And whether Germany will respect the tax-free character of a qualified Roth distribution is unsettled, the treaty having been drafted before Roth accounts existed.

A fifth item belongs to anyone arriving with a trust. § 15 of the Foreign Tax Act attributes the income of a foreign family foundation, a category the courts read to cover trusts, to a German-resident settlor from his first year of residence, whether or not anything is paid to him, and to German-resident beneficiaries where the settlor is not resident.[18] None of this waits for the treaty period to expire, and none of it is improved by the fact that Article 4(3) applies.

Part VII. Gifts while the period runs.

The treaty allocates gifts on the same plan as transfers at death, and Article 9 gives the State of domicile the exclusive right over everything outside Articles 5, 6 and 8.[19] So a gift of American securities made while you are treaty-domiciled in the United States is outside German gift tax, and a gift of the Munich apartment is not. The period is, in that narrow sense, a gifting window, and it is the one planning opportunity Article 4(3) actually creates.

Three qualifications discipline the opportunity. The first is the donee. Under § 7(1) No. 1 ErbStG a gift is taxable in Germany if either the donor or the acquirer is an Inländer, so a German-resident donee is an independent ground of charge under domestic law. Whether the treaty leaves that charge standing where the donor is treaty-domiciled in the United States turns on the reach of Article 11(1)(b), which is framed in terms of an acquisition at a decedent's death; the point should be confirmed on the treaty text and on current administrative practice before a substantial gift is made to a child or a parent living in Germany, because the answer decides whether the gift is free of German tax or taxed in full.[20]

The second is § 14 ErbStG, which aggregates all acquisitions from the same person within ten years for the allowance and for the rate scale.[21] A German-resident child's €400,000 refreshes once a decade, not once a year, and a gift made in year nine still shadows a death in year eighteen. The third is the American side, which does not go away: a United States

[16] §§ 16 and 18 of the Investmentsteuergesetz (InvStG); amounts taxed as Vorabpauschale are deducted from the gain on eventual disposal under § 19(1) sentence 3 InvStG, so the charge is a timing cost rather than a permanent double tax.

[17] § 20(2) and § 32d(1) EStG; the surcharge is levied under the Solidaritätszuschlaggesetz. Acquisition cost is converted at the exchange rate of the acquisition date.

[18] § 15(1) and (4) AStG; the exception in § 15(6) requires the settlor and the beneficiaries to be legally and factually deprived of access to the assets. A Ministry of Finance draft of November 18, 2025 would rewrite the provision and name trusts expressly; as of September 2026 it remains a draft and is not enacted.

[19] Articles 3, 5, 6, 8 and 9 of the treaty apply to gifts as well as to transfers at death; § 1(1) No. 2 and § 7(1) No. 1 ErbStG are the domestic charging provisions on the German side.

[20] § 7(1) No. 1 ErbStG; Article 11(1)(b) of the treaty. The Bundesfinanzhof decision of September 20, 2022, II B 2/22, concerned an acquisition on death and does not settle the gift case. Confirm before relying on either result.

[21] § 14 ErbStG. The allowance is granted once in each ten-year period; earlier acquisitions are brought in at their former values and the tax already assessed is credited.

citizen is taxed on worldwide gifts wherever domiciled, with the annual exclusion of $19,000 per donee for 2026 and the applicable exclusion amount of $15 million behind it, and Form 709 due on April 15 of the following year.[22]

The practical shape of the opportunity is therefore narrow but real: gifts of non-German property, to donees who are not resident in Germany, made before the period closes, spaced against the § 14 clock, and reported on Form 709.

Part VIII. If your spouse is not a United States citizen.

Many Americans arrive in Germany married to a German, or marry one after arriving, and the transfer tax treatment of a spouse turns on citizenship rather than on residence or a green card. Section 2523(a) grants an unlimited marital deduction for lifetime gifts between spouses, and § 2523(i)(1) withdraws it where the donee spouse is not a United States citizen. In its place § 2523(i)(2) allows an enhanced annual exclusion for present-interest gifts to that spouse: $194,000 for 2026, indexed.[23] The everyday acts that breach it are not obviously gifts: retitling a home into the spouse's name, adding a spouse to an account, or funding the spouse's separate investments can each be a taxable transfer discovered only when a gift tax return is prepared, or not prepared.

At death the position is starker. Section 2056(d) denies the marital deduction for property passing to a non-citizen surviving spouse unless it passes to a qualified domestic trust meeting the requirements of § 2056A, which include a United States trustee with power to withhold the deferred tax and, for a trust over $2 million, a bank trustee or security.[24]

The treaty offers an alternative, and its availability is tied to the very rule this guide is about. Article 10(6) permits a marital deduction limited to the applicable exclusion amount, without a qualified domestic trust, on an irrevocable waiver of the Code deduction, where the decedent was domiciled in Germany.[25] While Article 4(3) deems you domiciled in the United States, that condition is not met, so a non-citizen spouse is left with the Code and with the qualified domestic trust. From the eleventh year, when the deemed domicile lapses and you become a German domiciliary for treaty purposes, the treaty deduction comes into view. The treaty period, in other words, cuts both ways: it keeps Germany off your securities for a decade and it keeps the treaty marital deduction out of reach for the same decade.

The planning consequence is that a mixed-citizenship couple in Germany should not treat the qualified domestic trust as a problem deferred to the eleventh year. It is the instrument that is needed during the period, and it has to exist, funded and administered, before the first death rather than after it.

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[22] I.R.C. §§ 2501, 2503(b) (annual exclusion, $19,000 for 2026, indexed), 2505 and 2010(c) (applicable exclusion amount, $15,000,000 for 2026 as amended by Pub. L. 119-21 § 70106, indexed); Form 709 and its instructions.

[23] I.R.C. § 2523(a), (i)(1) and (i)(2); the enhanced exclusion is $194,000 for 2026 and is indexed annually. A green card does not satisfy the citizenship condition.

[24] I.R.C. § 2056(d) and § 2056A; Treas. Reg. § 20.2056A-2(d) (security requirements; the $2,000,000 threshold measured excluding up to $600,000 of value attributable to a personal residence used by the spouse).

[25] Article 10(6) of the estate and gift tax treaty. The election is made on the estate tax return and the Code deduction is waived; the availability condition, and in particular whether the decedent must be domiciled in Germany for treaty purposes, should be confirmed on the treaty text before the return is filed.

Part IX. Relief from the double charge: Article 11 and § 21 ErbStG.

Where both countries tax the same transfer the treaty does not exempt. It gives a credit and it decides which country must give it. Article 11(1) preserves each country's own claim: subparagraph (a) lets the United States tax the estate of its citizen as though the treaty did not exist, and subparagraph (b) lets Germany tax an acquisition by a beneficiary domiciled in Germany. Paragraphs 2 and 3 then assign the credit.

The United States credits under paragraph 2. Subparagraph (a) requires it to credit the German tax on property Germany may tax under Articles 5, 6 and 8. Subparagraph (b) goes further where the decedent was a United States citizen domiciled in Germany: the United States then credits the German tax on all other property as well, other than property it may itself tax under Articles 5, 6 or 8.[26] That is the provision that matters from the eleventh year, when Germany collects first on your securities and your accounts.

Germany credits under paragraph 3. Where Germany taxes on the basis of domicile, including a beneficiary's domicile under Article 11(1)(b), subparagraph (a) requires it to credit the United States tax on property the United States may tax under Articles 5, 6 and 8; and where the decedent was domiciled in the United States, which is your position while the period runs, subparagraph (b) requires Germany to credit the United States tax on all other property as well, except property lying in Germany.[27] For a daughter in Berlin inheriting while you are treaty-domiciled in the United States, the credit therefore covers the whole of her share apart from German real property or business property.

Two mechanical points decide whether that credit is worth anything. The first is apportionment. What Germany credits is the portion of the federal estate tax attributable to that beneficiary's share, so someone must apportion the estate's tax among the beneficiaries on the Form 706 values and prove that it was paid. The executor supplies both, and without them Germany credits nothing. The duty belongs in the will or the trust instrument rather than in a scramble when a German assessment arrives. The second is timing: the two assessments rarely arrive together, and a German beneficiary already assessed will need the American figures before her file can be closed.

Where the treaty does not apply, § 21 ErbStG supplies the domestic credit. A fully liable acquirer may credit a foreign tax that corresponds to the German inheritance tax, was assessed on the acquirer and paid, and arose within five years before the German tax, against the German tax attributable to the foreign property, which for a decedent who was not an Inländer means everything other than German situs property; the credit is proportional and cannot exceed the German tax on that property.[28] Two gaps keep § 21 alive even though the treaty prevails where it applies. State taxes are the first: the treaty covers the federal estate tax, so a state tax is creditable, if at all, only under § 21 and only if

[26] Article 11(2)(a) and (b) of the treaty; the credit under subparagraph (b) is allowed with respect to property other than property which the United States may tax in accordance with Article 5, 6 or 8. The credit is claimed on Schedule P of Form 706 and is limited, as under I.R.C. § 2014, to the United States tax attributable to the property.

[27] Article 11(3)(a) and (b) of the treaty. The credit cannot exceed the German tax attributable to the same property.

[28] § 21(1) sentences 1 to 4 and § 21(2) No. 2 ErbStG; § 21(3) (proof); ErbStR R E 21. The five-year limit has no counterpart in the treaty.

it corresponds to the German tax. A Maryland inheritance tax, levied on the acquirer at 10 percent with exemptions for spouses, descendants, parents and siblings, is the kind of tax § 21 contemplates; the Maryland and District of Columbia estate taxes, levied on the estate, are more doubtful; Virginia and California levy neither.[29] The five-year limit in § 21 is the second, and it bites where an American estate is assessed late.

Table 4. Which country collects and which credits

The transfer	Who collects first	Who credits
German real property, German business property, Article 8 partnership interests	Germany	The United States (Article 11(2)(a))
United States real property and business property, in any year	The United States	Germany, where Germany is also taxing (Article 11(3)(a))
Your other property, while the ten years run	The United States alone	No German charge on you, so nothing to credit
Your other property, from the eleventh year, or from the first year if you are a dual national	Germany	The United States (Article 11(2)(b)), on Schedule P of Form 706
An acquisition by a beneficiary living in Germany, in any year	Germany (Article 11(1)(b))	Germany credits the United States tax on all but German situs property (Article 11(3)(b))
A United States state estate or inheritance tax	The state	Only § 21 ErbStG, and only if the state tax corresponds to the German tax

The arithmetic deserves a plain sentence. A credit is worth the tax actually paid and no more. An estate below the federal exclusion, $15 million for 2026 and indexed after that, pays no federal estate tax, so a German-resident beneficiary credits nothing and the German inheritance tax on her share is the only transfer tax on the inheritance; it is not reduced by the American exclusion, the American marital deduction, or the American charitable deduction, none of which Germany recognises. Where the estate does pay at 40 percent above the exclusion, the American tax on her share will usually exceed the German tax at class I rates and the credit will remove the German tax altogether. Double taxation is a problem of the large estate. For the ordinary estate the problem is German taxation with no relief at all, in a family that assumed the American exclusion had covered everything.

Part X. A worked example: the same estate at year six and at year twelve.

Michael and Sarah Bennett are United States citizens and neither holds German citizenship. They move from Boston to Munich in March

[29] Article 2(1) of the treaty (taxes covered: the United States federal estate and gift taxes; the German Erbschaft- und Schenkungsteuer); Md. Code, Tax-Gen. § 7-201 et seq. (inheritance tax) and § 7-301 et seq. (estate tax); D.C. Code § 47-3701 et seq.; Va. Code § 58.1-901 et seq. (estate tax repealed for deaths after July 1, 2007).

2026 on a three-year assignment that becomes permanent. Their daughter Claire follows in 2027, takes a job and an apartment in Berlin, and lives in a household of her own. Michael holds a revocable living trust containing a brokerage account of United States securities and the Boston house, which the family keeps and lets; his traditional individual retirement account passes by beneficiary designation to Claire; and in 2029 the couple buy a Munich apartment, which is held personally because German real property cannot be held in the trust. The trust does not terminate at his death: it continues for Sarah for life and then for Claire.

Figures are illustrative and are converted at an assumed rate of $1.10 to the euro. They ignore reliefs that a real file would examine, and the availability of the full § 16 allowance where the treaty confines Germany to situs property is one of several points that would have to be settled on the facts.

Death in 2032, the sixth year

Michael has been domiciled in Germany for six years. He is a United States citizen and not a German citizen, and he is domiciled in both countries under Article 4(1). Article 4(3) therefore deems him domiciled in the United States, and Sarah, who forms part of his household and meets the same conditions, is deemed domiciled there with him.

On the American side the worldwide estate of about $12 million falls below the applicable exclusion amount, so no federal estate tax is due; Form 706 is filed to report the estate, to fix the heirs' basis under § 1014 and to elect portability of the unused exclusion.[30]

On the German side Article 9 allocates everything outside Articles 5, 6 and 8 to the United States, so the brokerage account, the Boston house and the retirement account are outside the German charge on Michael. The single German asset is the Munich apartment, which Article 5 assigns to Germany wherever he is domiciled. It passes to Sarah: €900,000 less the spouse allowance of €500,000 leaves €400,000, which falls in the band up to €600,000 and is taxed at 15 percent, producing €60,000.

Claire is the exception the family did not plan for. She lives in Berlin in a household of her own, so she is not inside the deemed domicile, and Article 11(1)(b) preserves Germany's right to tax her acquisition in full. Her retirement account of $2,000,000 is about €1,818,000; less the child allowance of €400,000 that leaves €1,418,000, taxed at 19 percent, producing about €269,000. Because no federal estate tax was paid, the credit under Article 11(3)(b) is worth nothing and the German tax stands in full. She must also give the § 30 notice within three months, and the SECURE Act requires her to empty the inherited account by the end of the tenth year after the death, each distribution being German income in her hands.

The continuing trust, which is the largest single exposure in the plan, costs nothing at all. § 3(2) No. 1 sentence 2 ErbStG treats the passing of property on death to a foreign asset-holding entity as an acquisition by that entity, but the property it acquires is outside the German charge because Michael is treaty-domiciled in the United States and Article 9 allocates it away. The German tax on the whole estate is about €329,000, and €269,000 of that falls on one daughter.

Death in 2038, the twelfth year

[30] I.R.C. §§ 2001, 2010(c), 2031, 2033, 6018(a) and 1014; Form 706 is due nine months after death, extendable six months on Form 4768. Article 11(1)(a) of the treaty preserves the United States charge on the estate of its citizen.

The deemed domicile lapsed in 2036. Michael is now a German domiciliary for treaty purposes, Germany taxes the worldwide transfer under its own law, and the United States continues to tax him as a citizen under Article 11(1)(a), with the credits of Article 11(2) allocating the burden.

The apartment and the retirement account produce much what they produced before: €75,000 on an apartment now worth €1,000,000 passing to Sarah, and about €269,000 on Claire's account. The trust is the difference. It continues after the death, so under § 3(2) No. 1 sentence 2 ErbStG the trust itself is the acquirer; it is a foreign entity related to no one, so it takes tax class III with an allowance of €20,000 and the class III scale of 30 percent to 50 percent.[31] The brokerage account and the Boston house together are about $10,200,000, or €9,272,000; less €20,000 that is €9,252,000, which is above €6,000,000 and therefore taxed at 50 percent, producing €4,626,000.

The hardship rule reduces that figure and is worth following. Tax on an acquisition of exactly €6,000,000 at the 30 percent band would be €1,800,000, so the additional tax produced by crossing into the 50 percent band is €2,826,000. The amount by which the acquisition exceeds the threshold is €3,252,000, and because the rate is above 30 percent § 19(3) allows the additional tax to be collected only so far as three quarters of that excess will cover it, that is €2,439,000. The tax is therefore €1,800,000 plus €2,439,000, about €4,239,000.

The German tax at the twelfth-year death is accordingly about €4,583,000, against about €329,000 six years earlier on substantially the same balance sheet. The apartment and the retirement account account for almost none of the increase. The whole of it is the trust, which was harmless while Article 4(3) applied and became a class III acquirer on the day it stopped.

Table 5. The Bennett estate at year six and at year twelve

	Death in 2032, year six	Death in 2038, year twelve
Treaty domicile (Article 4(3))	United States	Germany, the period having lapsed in 2036
Munich apartment to Sarah	€60,000	€75,000
Retirement account to Claire in Berlin	about €269,000 (Article 11(1)(b))	about €269,000
Continuing trust (§ 3(2) No. 1 sentence 2 ErbStG)	Nil; the property is allocated to the United States by Article 9	about €4,239,000 in class III after § 19(3)
Total German tax	about €329,000	about €4,583,000
United States federal estate tax	Nil; estate below the exclusion	Nil or minimal; credit under Article 11(3)(a) correspondingly small

[31] § 3(2) No. 1 sentence 2 ErbStG; § 15(1) and § 16(1) No. 7 ErbStG (class III, €20,000); § 19(1) ErbStG. § 15(2) sentence 1 ErbStG, which keys the class to the settlor's relationship to the most remote beneficiary in the case of a family foundation, is applied by the tax administration only to foundations established in Germany.

Two lessons come out of the arithmetic. The first is that the treaty period conceals the cost of a defective instrument rather than curing it: the trust was always going to be a class III acquirer in Germany, and the rule merely postponed the day. The second is that the exposure that did bite in year six, Claire's €269,000, had nothing to do with the period at all and would have been the same in year one.

Part XI. Other ten-year periods, and why none of them is this one.

German and American law are both fond of ten-year periods, and Americans in Germany routinely hear about one and act on another. These are the ones that come up.

Table 6. Ten-year periods that are not Article 4(3)

Provision	What it says	Why it is not the treaty rule
§ 2(1) No. 1 sentence 2(b) ErbStG	A German citizen who gives up German residence remains an Inländer for five years, and for ten years in relation to the United States under the act approving the 1998 Protocol	The mirror image: a tail on Germans leaving, not a shelter for Americans arriving. It catches the dual national and the German-citizen relative who moved to the United States
§ 14 ErbStG	Acquisitions from the same person within ten years are aggregated for the allowance and the rate scale	A gift-planning clock, not a residence clock. It runs against a German-resident donee whatever the donor's treaty domicile
§ 2325(3) BGB	A gift made within ten years of death is added back to the estate for the compulsory-share supplement, on a sliding scale reduced by one tenth for each completed year	Succession law rather than tax. It bites where German succession law governs the estate, which it does by default once the testator is habitually resident in Germany
§ 23(1) No. 1 EStG	A gain on a private sale of real property is taxable if the property is sold within ten years of purchase, measured from the notarial contracts, and free of German tax after that; property used for the owner's own residential purposes in the year of sale and the two preceding calendar years is exempt whenever it is sold	Income tax, and the most commonly confused of them all. It says nothing about inheritance tax, and the United States taxes the same gain with only the § 121 exclusion, plus a possible currency gain under § 988 on repaying a euro mortgage
The SECURE Act ten-year rule	Most non-spouse beneficiaries must empty an inherited individual retirement account by the end of the tenth year after the death	A United States rule about the account, unconnected to German domicile. It matters because those distributions are also German income for a beneficiary in Germany
§ 6 AStG, seven years of twelve	Not ten years, but the clock that starts on arrival: once a person has been subject to unlimited German tax for at least seven	The exit charge on the way out. An American who moves to Germany holding a stake in a

Provision	What it says	Why it is not the treaty rule
	years within the last twelve and holds 1 percent or more of a corporation, leaving Germany triggers a deemed disposal of the shares	company acquires a German exit tax problem simply by staying

Each of those provisions is footnoted where it is stated, and none of them is affected by the treaty period.[32]

Part XII. Practical steps.

Before the move, or now, if the move has already happened

1. **Establish the citizenship of every member of the household, on paper.** Confirm whether you, your spouse and each child hold German citizenship as well as American, including citizenship acquired at birth through a parent or restored under the restitution provisions. That single fact decides whether Article 4(3) is available to each of you, and it decides it from the first German day rather than in the eleventh year.

2. **Date the German domicile and count backwards.** Establish the day the German dwelling became available, add any earlier period of German residence, and record the date on which the ten years expire. Every decision below is measured against it.

3. **Have the trust read by someone who knows German law, before you land.** Decide whether a revocable trust terminates at death or continues, and put the answer in the instrument. Decide whether to release powers over an irrevocable trust or to accept attribution under § 15 AStG. Keep the trustee a United States person. For a dual national the class III charge is live immediately and the review cannot wait.

4. **Do the income tax work now, not in year ten.** Review American funds and exchange-traded funds against the Investment Tax Act, municipal bonds that lose their exemption on arrival, Roth accounts and their documentation, and the classification of any limited liability company or S corporation. Weigh the date of the move itself against bonus, vesting and gain-realisation timing.

5. **Take the naturalisation question with the estate plan open.** Naturalising in year five ends the treaty period in year five, and the condition is tested at the transfer, so anything that depends on the rule must be completed first.

While the period runs

6. **Use the period for gifts of non-German property, and check the donee first.** A gift of American securities while you are treaty-domiciled in the United States is allocated to the United States by Article 9. Where the donee lives in Germany, settle the reach of Article 11(1)(b) before the gift is made. Space gifts

[32] § 2(1) No. 1 sentence 2(b) ErbStG with Article 3 of the Act of September 15, 2000 approving the Protocol of December 14, 1998 (Bundesgesetzblatt 2000 II p. 1170); § 14 ErbStG; § 2325(3) BGB; § 23(1) No. 1 sentence 1 and sentence 3 EStG; I.R.C. §§ 121, 988 and 401(a)(9)(H) as enacted by the SECURE Act; § 6(1) and (2) AStG (deemed disposal on departure; personal scope of at least seven years of unlimited liability within the last twelve) in conjunction with § 17(1) sentence 1 EStG (shareholding of at least 1 percent).

against the ten-year aggregation of § 14 ErbStG and file Form 709.

7. **Keep German assets out of the trust and cover them with a German will.** German real property and German bank accounts cannot be held in a trust. A German will appointing an executor able to act in Germany is what releases them.

8. **Choose a succession law expressly.** A testator habitually resident in Germany has German succession law applied to the whole estate, movable and immovable, wherever it lies, unless the will chooses the law of the American state of nationality. Make the choice in terms, and know its limit: a chosen law with no need-independent compulsory share can offend German public policy where the child and the estate are in Germany.

9. **Map every beneficiary by residence.** The German exposure of the estate is one number for each acquirer, driven by that person's own residence and relationship to the decedent. A single child in Germany can carry the entire German charge on a family whose other members are all in the United States.

10. **Provide for a non-citizen spouse now, not in the eleventh year.** The treaty marital deduction of Article 10(6) is not available while the deemed domicile places you in the United States, so a qualified domestic trust is the instrument that has to exist during the period. Use the § 2523(i) annual exclusion in the meantime.

11. **Write the apportionment duty into the documents.** Direct the executor to apportion the federal estate tax among the beneficiaries on the Form 706 values and to furnish proof of payment. That instruction is what makes the German credit under Article 11(3)(b) or § 21 ErbStG claimable at all.

12. **Calendar the German notices.** An acquirer in Germany has three months under § 30 ErbStG from learning of the acquisition, on estimated figures if necessary, with the return corrected later. Waiting for the American estate to close usually means the three months have gone.

Before the eleventh year

13. **Run the computation for the year after the period ends, not for the year you are in.** From the eleventh year Germany taxes the worldwide estate under its own law, the United States taxes you as a citizen, and Article 11(2)(b) puts the credit on the American side. A plan that was right in year five can be badly wrong in year eleven.

14. **Revisit the trust's termination clause.** The § 3(2) No. 1 sentence 2 charge on a continuing trust arrives with the eleventh year, in class III, above an allowance of €20,000, and the worked example in Part X shows what that costs on an ordinary balance sheet.

15. **Decide, deliberately, whether to stay.** The eleventh year, the naturalisation decision, a return to the United States and a move to a third country are one decision rather than four. Where a corporate stake of 1 percent or more is held, § 6 AStG belongs in that decision before any departure is planned.

Conclusion

Article 4(3) governs one tax and one taxpayer: German inheritance and gift tax, on a person who is a citizen of one of the two countries and not of both. It does not govern income, which

Germany taxes from the first day; it does not govern an heir who lives in Germany in a household of her own, whom Article 11(1)(b) reaches whatever the decedent's treaty domicile; it does not govern the sale of an apartment; and it does not reach a dual national or a permanent resident at all. Where it does apply it confines Germany, for a decade, to German real property and German business property, and it postpones rather than removes every German consequence that attaches to the structures an American brings with him. The plan that is built for the eleventh year is the plan that works in the fifth; the plan built for the fifth is the one that produces the figures in Part X.

Contact

If you are planning a move to Germany, or you are already there and the ten years are running, the questions to settle are which passports each member of the household holds, when your German domicile began, where each of your beneficiaries lives, what your trust does at your death, whether your spouse is a United States citizen, and how the credit will be documented when the time comes. **Ashford International Law PC advises Americans moving to Germany and their families** on the Article 4(3) analysis and the citizenship review, the German exposure of each beneficiary under Article 11(1)(b), the review and redrafting of a revocable or irrevocable trust before the move, the qualified domestic trust and the Article 10(6) election for a non-citizen spouse, the German will and the choice of succession law alongside the American plan, and the coordination of United States estate tax with German inheritance tax under Article 11 and § 21 ErbStG, alongside the family's existing advisers or leading the U.S. side end to end.

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and they change. Statuses and figures are stated as of September 2026 and must be confirmed before any decision. The draft revision of § 15 AStG of November 18, 2025 has not been enacted. Nothing here is advice on any particular estate, gift or transfer. An American moving to or living in Germany should obtain advice from qualified counsel in both countries promptly, and in any event before naturalising, before making a substantial gift, and before the tenth year of German residence closes.

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