

# Port7

## Tax evasion in Germany

Tax evasion is a criminal offense. It belongs to the broad area of economic crimes. The aim of punishing tax evasion is to secure the state's tax claim, i.e. to protect the state's assets. This abstract objective is regularly pursued in concrete terms by tax investigators, public prosecutors and courts.

### When do I commit tax evasion?

Tax evasion can be committed in various ways. In practice, there are two main variants.

In the first variant, someone makes incorrect or incomplete statements to the tax authorities or other authorities about tax-relevant facts. The decisive factor here is that these are tax-relevant facts. This depends on the individual taxes. If this information is incomplete or untruthful, this may constitute tax evasion.

For example, anyone who does not fully declare their income from renting out a property and partially omits income from the calculation of profit is making incomplete statements. Private costs such as food or drinks are also often declared as expenses, which can lead to accusations of tax evasion.

For example, the size of a room is also relevant for income tax purposes when it comes to the amount of costs that can be claimed for the study located there. For income tax purposes, for example, it can also be relevant whether there is an intention to rent out an apartment or house. This in turn determines whether costs for renovation or conversion can be claimed.

At first glance, these examples seem like trivialities, and people like to talk about trivial offenses. Nevertheless, practice shows time and again that tax investigators are also active in the area of small amounts. Cases involving higher amounts are pursued all the more, especially in the case of VAT.

In the second variant, no information is provided to the tax authorities at all. This is regularly the case if there was an obligation to submit a tax return, but no tax return was submitted. This is not just about the annual income tax return. Rather, tax evasion in this variant can also be committed by not submitting an advance VAT return or income tax return to the tax office. However, tax evasion can also quickly occur in the case of inheritance tax or gifts.

Many people are unaware of their obligations in Germany, particularly in cases where they are not resident in Germany but have assets or sources of income in Germany. It is precisely then that the accusation of tax evasion hits you all the harder!

### Tax evasion without damage?

The "success" of tax evasion consists of a so-called tax reduction. This means that taxes are not assessed in full or on time. A settlement is therefore reached. The settlement relates either to the amount of tax assessed or to be assessed or to the time at which the tax is assessed. If, for example, the size of the study is initially stated incorrectly (too large) and the actual size is subsequently discovered, this may constitute a tax reduction. If the tax is initially assessed at a lower rate than would be correct, the tax would not be assessed in full.

### What can I do if I am accused of tax evasion?

If the tax investigation accuses you of tax evasion, it is important to seek advice immediately. If the proceedings are opened against you in writing, you have time to have the accusation examined by a

lawyer. Please remain silent vis-à-vis the tax investigation or the tax office! You should only make statements after consulting a lawyer. The tax law side and the criminal law side must always be considered equally. The accusation of criminal conduct may be dropped if it can be proven that the decision is incorrect.

If, on the other hand, the proceedings are opened verbally, for example during a search, it is crucial to do two things. Firstly, remain silent vis-à-vis the tax investigators. In this situation, you must not allow yourself to be caught off guard by the surprise effect and the pressure that then builds up and provide information on the facts of the case under the impression of the situation. Much of what is said in this situation will also be regretted later. It is just as important to consult a lawyer immediately as it is to remain silent. If this is possible, during the search, otherwise immediately afterwards. For this purpose, I maintain a cell phone that I can use at any time.

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