

§ 370 German Fiscal Code

English Version

Section 370 Tax evasion

(1) A penalty of up to five years' imprisonment or a monetary fine shall be imposed on any person who

1. furnishes the revenue authorities or other authorities with incorrect or incomplete particulars concerning matters of substantial significance for taxation,
 2. fails to inform the revenue authorities of facts of substantial significance for taxation when obliged to do so, or
 3. fails to use revenue stamps or revenue stamping machines when obliged to do so
- and as a result understates taxes or derives unwarranted tax advantages for himself or for another person.

(2) Attempted perpetration shall be punishable.

(3) In particularly serious cases, a penalty of between six months and ten years' imprisonment shall be imposed. A case shall generally be deemed to be particularly serious where the perpetrator

1. deliberately understates taxes on a large scale or derives unwarranted tax advantages,
2. abuses his authority or position as a public official,
3. solicits the assistance of a public official who abuses his authority or position,
4. repeatedly understates taxes or derives unwarranted tax advantages by using falsified or forged documents, or
5. as a member of a group formed for the purpose of repeatedly committing acts pursuant to subsection (1) above, understates value-added taxes or excise duties or derives unwarranted VAT or excise duty advantages.

(4) Taxes shall be deemed to have been understated in particular where they are not assessed at all, in full or in time; this shall also apply even where the tax has been assessed provisionally or assessed subject to re-examination or where a self-assessed tax return is deemed to be equal to a tax assessment subject to re-examination. Tax advantages shall also include tax rebates; unwarranted tax advantages shall be deemed derived to the extent that these are wrongfully granted or retained. The conditions of the first and second sentences above shall also be fulfilled where the tax to which the act relates could have been reduced for other reasons or the tax advantage could have been claimed for other reasons.

(5) The act may also be committed in relation to goods whose importation, exportation or transit is banned.

(6) Subsections (1) to (5) above shall apply even where the act relates to import or export duties which are administered by another Member State of the European Communities or to which a Member State of the European Free Trade Association or a country associated therewith is entitled. The same shall apply where the act relates to value-added taxes or harmonised excise duties on goods designated in Article 3(1) of Council Directive 92/12/EEC of 25 February 1992 (OJ L 76, p. 1) which are administered by another Member State of the European Communities.

(7) Irrespective of the *lex loci delicti*, the provisions of subsections (1) to (6) above shall also apply to acts committed outside the territory of application of this Code.