

US-Germany Estate & Gift Tax Treaty — Cheat Sheet

Convention of Dec 3, 1980, as amended by the Protocol of Dec 14, 1998 (estate, inheritance, and gift taxes).

1) What taxes are covered?

- United States: **Federal** estate and gift taxes (not state-level taxes).
- Germany: Inheritance (Erbschaftsteuer) & gift (Schenkungssteuer) per federal law.

2) Who is covered (personal scope)?

Applies to individuals who are **domiciled** in one or both States (domicile determined by each State's law; tie-breaker rules apply).

3) Key allocation rules (situs / taxing rights)

- Immovable property (real estate): taxable where situated.
- Business property of a permanent establishment: taxable where the PE is located.
- Ships/aircraft in international traffic: taxable only by the State of the enterprise.
- Other property (movables, intangibles, securities): generally taxable by the State of **domicile**, subject to specific exceptions in the Convention.

4) Relief methods (avoidance of double taxation)

Each State grants relief via **credits** or **exemptions** according to the Convention. For U.S. estate tax, see the special **pro-rata unified credit** for German domiciliaries (below).

5) Special U.S. rules introduced by the 1998 Protocol

Pro-rata unified credit (U.S. estate tax): If the decedent was domiciled in Germany, the U.S. grants a unified credit in proportion to the share of the worldwide gross estate situated in the U.S., not exceeding the U.S. tax otherwise due.

Special marital deduction (U.S.): A limited marital deduction is allowed for transfers to a surviving spouse (even if not a U.S. citizen) if treaty conditions are met and an election/waiver is made. This is separate from a QDOT and has specific eligibility criteria.

6) Saving clause & exceptions

Each State may tax its citizens and residents under domestic law (saving clause). However, the treaty carves out **exceptions** (e.g., the pro-rata unified credit and special marital deduction) so the saving clause does not override those benefits for eligible persons. Anti-expatriation rules may limit certain benefits for former citizens/long-term residents for a 10-year period.

7) Coordination points Germany ↔ U.S.

- Germany taxes the **heir/donee** (Erbanfallsteuer), while the U.S. imposes tax on the **estate** (transfer at death). Credit coordination bridges this difference.
- State estate/inheritance taxes in the U.S. are **not** covered by the treaty; consider potential state-level exposure separately.
- Debt/deductions are generally allocable by situs or proportion; documentation matters for cross-border liabilities.

- Mutual Agreement Procedure (MAP) is available to resolve double-taxation disagreements.

8) Quick examples

Scenario	Baseline outcome (high-level)
German-domiciled decedent with U.S. marital assets	U.S.-situs assets; U.S. estate tax grants pro-rata unified credit
U.S.-domiciled decedent with German real property	German proprietary right over the German real estate; the U.S. taxes won't apply
Bequest to non-U.S.-citizen spouse	Potential special marital deduction under the Protocol if conditions/election met

9) Practical tips

- Establish **domicile** facts early (center of vital interests, intent).
- Document asset **situs** and **PE** status where relevant.
- Model outcomes under both systems; check **state taxes** in the U.S.
- Consider **QDOT vs. treaty marital deduction** for non-citizen spouses.
- Use the **Mutual Agreement Procedure (MAP)** if double taxation persists.

Disclaimer

This is a high-level summary for general information only and not legal or tax advice. Treaty application depends on individual facts and may change with law updates. Consult a qualified advisor.

(Treaty: Dec 3, 1980; Protocol: Dec 14, 1998).