

equivalent in a foreign currency) at the end of any calendar month. Residents are also required to report annually to the German Central Bank any shares or voting rights of 10% or more which they hold directly or indirectly in non-resident corporations with total assets of more than €3 million. Corporations residing in Germany with assets in excess of €3 million must report annually to the German Central Bank any shares or voting rights of 10% or more held directly or indirectly by a Non-Resident. For a discussion of the treatment of remittance of dividends, interest or other payments to Non-Resident holders of ADSs or ordinary shares, see below “– Taxation – German Taxation of Holders of ADSs or Ordinary Shares.”

## TAXATION

### General

The following discussion summarizes certain German tax and U.S. federal income tax consequences of the acquisition, ownership and disposition of ADSs or ordinary shares. Although the following discussion does not purport to describe all of the tax considerations that may be relevant to a prospective purchaser of ADSs or ordinary shares, this discussion: (i) summarizes the material German tax consequences to a holder of ADSs or ordinary shares, and (ii) summarizes certain material U.S. federal income tax consequences to a U.S. Holder (as hereinafter defined) of ADSs or ordinary shares that is not resident (in the case of an individual) or domiciled (in the case of a legal entity), as the case may be, in Germany (in either case, referred to herein as “not resident” or as a “non-resident”) and does not have a permanent establishment or fixed base located in Germany through which such ADSs or ordinary shares are held.

### German Taxation of Holders of ADSs or Ordinary Shares

The following discussion generally summarizes the principal German tax consequences of the acquisition, ownership and disposition of ADSs or ordinary shares to a beneficial owner. This summary is based on the laws that are in force at the date of this Annual Report on Form 20-F and is subject to any changes in German law, or in any applicable double taxation conventions to which Germany is a party, occurring after such date. This discussion is also based, in part, on representations of the Depositary and assumes that each obligation of the Deposit Agreement and any related agreements will be performed in accordance with its terms.

The following discussion is not a complete analysis or listing of all potential German tax consequences to holders of ADSs or ordinary shares and does not address all tax considerations that may be relevant to all categories of potential purchasers or owners of ADSs or ordinary shares. In particular, the following discussion does not address the tax consequences for: (i) a person that owns, directly or indirectly, 1% or more of SAP AG’s shares; (ii) a holding which forms a part of a German permanent establishment of a person not resident in Germany; (iii) a person that is resident in Germany and at the same time resident in another country; or (iv) a pension fund.

OWNERS AND PROSPECTIVE PURCHASERS OF OUR ADSs OR ORDINARY SHARES ARE URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING THE OVERALL GERMAN TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION THEREOF.

For purposes of applying German tax law and the double taxation conventions to which Germany is a party, a holder of ADSs will generally be treated as owning the ordinary shares represented thereby.

### German Taxation of Dividends

For income tax purposes the half-income system applies with regard to the taxation of dividends. Under this system only half of the distributed profits of a corporation will be included in the personal income tax base of an individual shareholder resident in Germany. It is not possible to credit the corporation

tax paid by the company against the shareholder's income tax. For corporation tax purposes, effectively, a portion of 95% of the dividends received by corporate shareholders domiciled in Germany will be tax-exempt in order to avoid double taxation. These rules have some exceptions, which especially apply to financial and certain insurance institutions.

Based on these considerations the German taxation of dividends can be summarized as follows:

Under German income tax law, German corporations are required to withhold tax on dividends in an amount equal to 20% of the gross amount paid to resident and non-resident shareholders. As the basis for deduction of the withholding tax is the gross amount, withholding tax will be deducted on the taxable and tax-exempt portion of the dividend received. A 5.5% solidarity surtax on the German withholding tax is currently levied on dividend distributions paid by a German corporation, such as SAP AG. The solidarity surtax equals 1.1% (5.5% of 20%) of the gross amount of a cash dividend. Certain persons resident in Germany (e.g., qualifying investment funds or tax-exempt organizations) may obtain a partial or full refund of such taxes.

For an individual holder of ordinary shares that is resident in Germany, according to German income tax law, half of the dividends received (which are dependent on the euro/dollar exchange rate at the time of payment) are subject to German income tax. The same is true for ADSs because each of them represents one ordinary share. For such a holder, the taxable amount will be the sum of: (i) half of the cash payment by SAP AG and (ii) half of the taxes withheld. For a corporate holder of ADSs or ordinary shares that is domiciled in Germany, according to German income tax law, dividends in principle are exempt from corporation tax. However, a portion of 5% of the dividends received is treated as non deductible expenses. Therefore, effectively a portion of 95% of dividends received by a corporate holder of ADSs or ordinary shares that is resident in Germany is exempt and a portion of 5% of the dividends received is subject to corporation tax. These rules as regards the (partial) exemption for dividends from corporation tax have some exceptions, which especially apply to financial and certain insurance institutions.

Subject to certain conditions, the tax withheld on the gross amount will be eligible for credit against the holder's income tax or corporation tax liability. Exceeding amounts are refunded upon filing and assessment of the tax return. For holders subject to German trade tax, such tax is imposed, in general, only on the amount of the dividends received, which is subject to income tax or corporation tax. On the portion of the dividends received which is exempt from income tax or corporation tax, trade tax will become due if the holder of ADSs or ordinary shares does not own at least 10% of the shares in the distributing corporation at the beginning of the tax year.

#### **Refund of German Tax to U.S. Holders**

A partial refund of the 20% withholding tax equal to 5% of the gross amount of the dividend and a full refund of the solidarity surtax can be obtained by a U.S. Holder (as hereinafter defined) under the U.S.-German income tax treaty (Convention between the Federal Republic of Germany and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income, German Federal Law Gazette 1991 II page 355, also under the Protocol of 1 June 2006) (the "Treaty"). Thus, for each US\$100 of gross dividends paid by SAP AG to a U.S. Holder, the dividends after partial refund of the 20% withholding tax and a refund of the solidarity surtax under the Treaty will be subject to a German withholding tax of US\$15.

To claim the refund of amounts withheld in excess of the Treaty rate, a U.S. Holder must submit (either directly or, as described below, through the Depositary) a claim for refund to the German tax authorities, with, in the case of a direct claim, the original bank voucher (or certified copy thereof) issued by the paying entity documenting the tax withheld, within four years from the end of the calendar year in which the dividend is received. Claims for refund are made on a special German claim for refund form, which must be filed with the German tax authorities: Bundeszentralamt für Steuern, D-53221 Bonn,

Germany; <http://www.bzst.bund.de>. The German claim for refund form may be obtained from the German tax authorities at the same address where applications are filed, or from the Embassy of the Federal Republic of Germany, 4645 Reservoir Road NW, Washington, D.C. 20007.

U.S. Holders must also submit to the German tax authorities a certification of their U.S. residency status (IRS Form 6166). This certification can be obtained from the Internal Revenue Service by filing a request for certification with the Internal Revenue Service, P.O. Box 42530, Philadelphia, PA 19101-2530 or, by private delivery service to Citibank, Attention: IRS Lockbox Operations, 1617 Brett Road, New Castle, DE 19720-2425. Requests for certification of U.S. residency status are to be made by filing Form 8802 Application for United States Residency Certification.

In accordance with arrangements under the Deposit Agreement, the Depositary (or a custodian as its designated agent) holds the ordinary shares and receives and distributes dividends to the U.S. Holders. The Depositary has agreed, to the extent practicable, to perform administrative functions necessary to obtain the refund of amounts withheld in excess of the Treaty rate for the benefit of U.S. Holders who supply the necessary documentation.

In order to claim a refund, the U.S. Holder should deliver an IRS Form 6166 certification to the Depositary along with the completed claim for refund form. In the case of ADSs held through a broker or other financial intermediary, the required documentation should be delivered to such broker or financial intermediary for forwarding to the Depositary. In all other cases, the U.S. Holders should deliver the required documentation directly to the Depositary. The Depositary will file the required documentation with the German tax authorities on behalf of the U.S. Holders.

The German tax authorities will issue the refunds, which will be denominated in euro, in the name of the Depositary. The Depositary will convert the refunds into dollars and issue corresponding refund checks to the U.S. Holders or their brokers.

#### **Refund of German Tax to Holders of ADSs or Ordinary Shares in Other Countries**

A holder of ADSs or ordinary shares resident in a country other than Germany or the United States that has entered into a double taxation convention with Germany may obtain a full or partial refund of German withholding taxes. Rates and procedures may vary according to the applicable treaty. For details, such holders are urged to consult their own tax advisors.

#### **German Taxation of Capital Gains**

Half of a capital gain derived from the sale or other disposition by an individual holder resident in Germany of ADSs or ordinary shares is subject to income tax if the ADSs or ordinary shares are held as part of his or her trade or business or if the ADSs or ordinary shares held as part of his or her private assets are sold within a period of one year after acquisition.

A capital gain derived from the sale or other disposition by a corporate holder domiciled in Germany of ADSs or ordinary shares is, in principle, exempt from corporation tax. However, a portion of 5% of a capital gain derived is treated as non-deductible business expenses. Therefore, effectively a portion of 95% of a capital gain derived from the sale or other disposition by a corporate holder domiciled in Germany of ADSs or ordinary shares is exempt and a portion of 5% of a capital gain derived is subject to corporation tax. These rules as regards the (partial) exemption from corporation tax have some exceptions, which especially apply to financial and certain insurance institutions.

Special rules apply for individual and corporate holders resident in Germany if the shares have been received in the course of a tax-exempt reorganization.

For holders subject to German trade tax, such tax is imposed in general only on the portion of the capital gain, which is subject to income tax or corporation tax.

A holder (as defined above) resident or domiciled in a country other than Germany is not subject to German income or corporation tax on the capital gain derived from the sale or other disposition of ADSs or ordinary shares.

#### **Upcoming German Tax Reform for Dividend and Capital Gains Taxation**

According to the coalition agreement reached between the political parties of the German federal government a general lump-sum taxation for dividends and capital gains of the sale of privately held shares shall be introduced. Although the government has decided upon a draft of the law, the details of such proposed change are yet to be finalized. In particular, it is expected that the respective regulations dealing with the general lump-sum taxation will not be effective before January 1, 2009.

#### **Other German Taxes**

There are no German net worth, transfer, stamp or similar taxes on the holding, purchase or sale of ADSs or ordinary shares.

#### **German Estate and Gift Taxes**

A transfer of ADSs or ordinary shares by gift or by reason of death of a holder will be subject to German gift or inheritance tax, respectively, if one of the following persons is resident in Germany: the donor or transferor or his or her heir, or the donee or other beneficiary. If one of the aforementioned persons is resident in Germany and another is resident in a country having a treaty with Germany, regarding gift or inheritance taxes, different rules may apply. If none of the aforementioned persons is resident in Germany, the transfer is not subject to German gift or inheritance tax. For persons giving up German residence, special rules apply during the first five years, and under specific circumstances, during the first ten years, after the end of the year in which the person left Germany. In general, in the case of a U.S. Holder, a transfer of ADSs or ordinary shares by gift or by reason of death that would otherwise be subject to German gift or inheritance tax, respectively, will not be subject to such German tax by reason of the U.S.-German estate tax treaty (Convention between the Federal Republic of Germany and the United States of America for the Avoidance of Double Taxation with respect to Estate, Gift and Inheritance Taxes, German Federal Law Gazette 1982 II page 847, amended by the Protocol of September 15, 2000, German Federal Law Gazette 2000 II, page 1170 and as published on December 21, 2000, German Federal Law Gazette 2001 II, page 65) (the "Estate Tax Treaty") unless the donor or transferor, or the heir, donee or other beneficiary, is domiciled in Germany for purposes of the Estate Tax Treaty at the time of the making of the gift or at the time of the donor's or transferor's death.

In general, the Estate Tax Treaty provides a credit against U.S. federal estate and gift tax liability for the amount of inheritance and gift tax paid in Germany, subject to certain limitations, in a case where the ADSs or ordinary shares are subject to German inheritance or gift tax and U.S. federal estate or gift tax.

#### **U.S. Taxation of U.S. Holders of Ordinary Shares or ADSs**

The following discussion generally summarizes certain U.S. federal income tax consequences of the acquisition, ownership and disposition of ADSs or ordinary shares to a beneficial owner: (i) who is an individual citizen or resident of the United States or a corporation organized under the laws of the United States or any political subdivision thereof, an estate whose income is subject to U.S. federal income tax regardless of its source or a trust, if a U.S. court can exercise primary supervision over its administration and one or more U.S. persons are authorized to control all substantial decisions of the trust; (ii) who is not resident in Germany for German tax purposes; (iii) whose holding of ADSs or ordinary shares does not form part of the business property or assets of a permanent establishment or fixed base in Germany; and (iv) who is fully entitled to the benefits of the Treaty in respect of such ADSs or ordinary shares (a "U.S. Holder").

This summary deals only with ADSs and ordinary shares that are held as capital assets and does not address tax considerations applicable to U.S. Holders that may be subject to special tax rules, such as dealers or traders in securities, financial institutions, insurance companies, tax-exempt entities, regulated investment companies, U.S. Holders that hold ordinary shares or ADSs as a part of a straddle, conversion transaction or other arrangement involving more than one position, U.S. Holders that own (or are deemed for U.S. tax purposes to own) 10% or more of the total combined voting power of all classes of voting stock of SAP AG, U.S. Holders that have a principal place of business or “tax home” outside the United States or U.S. Holders whose “functional currency” is not the dollar and U.S. Holders that hold ADSs or ordinary shares through partnerships or other pass-through entities.

The discussion below is based upon the U.S. Internal Revenue Code of 1986, as amended (the “Code”), the Treaty and regulations, rulings and judicial decisions thereunder at the date of this Annual Report on Form 20-F. Any such authority may be repealed, revoked or modified, perhaps with retroactive effect, so as to result in U.S. federal income tax consequences different from those discussed below. No assurance can be given that the conclusions set out below would be sustained by a court if challenged by the IRS. The discussion below is based, in part, on representations of the Depositary, and assumes that each obligation in the Deposit Agreement and any related agreements will be performed in accordance with its terms.

THE DISCUSSION SET OUT BELOW IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF AN INVESTMENT IN ADSs OR ORDINARY SHARES. PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE APPLICATION TO THEIR PARTICULAR SITUATION OF THE TAX CONSIDERATIONS DISCUSSED BELOW, AS WELL AS THE APPLICATION OF STATE, LOCAL OR FOREIGN TAX LAW. THE STATEMENTS OF U.S. TAX LAW SET OUT BELOW ARE BASED ON THE LAWS IN FORCE AND INTERPRETATIONS THEREOF AT THE DATE OF THIS ANNUAL REPORT ON FORM 20-F AND ARE SUBJECT TO ANY CHANGES OCCURRING AFTER THAT DATE.

For U.S. federal income tax purposes, a U.S. Holder of ADSs will be considered to own the ordinary shares represented thereby. Accordingly, unless the context otherwise requires, all references in this section to ordinary shares are deemed to refer likewise to ADSs representing an ownership interest in ordinary shares.

## **Distributions**

Subject to the discussion below under “Passive Foreign Investment Company Considerations,” distributions made by SAP AG with respect to ordinary shares (other than distributions in liquidation and certain distributions in redemption of stock), including the amount of German tax deemed to have been withheld in respect of such distributions, will be taxed to U.S. Holders as ordinary dividend income to the extent that such distributions do not exceed the current and accumulated earnings and profits of SAP AG as computed for U.S. federal income tax purposes. As discussed above, a U.S. Holder may obtain a refund of German withholding tax to the extent that the German withholding tax exceeds 15% of the amount of the associated distribution. For example, if SAP AG distributes a cash dividend equal to US\$100 to a U.S. Holder, the distribution currently will be subject to German withholding tax of US\$20 plus US\$1.10 surtax, and the U.S. Holder will receive US\$78.90. If the U.S. Holder obtains the Treaty refund, he will receive an additional US\$6.10 from the German tax authorities. For U.S. tax purposes, such U.S. Holder will be considered to have received a total distribution of US\$100, which will be deemed to have been subject to German withholding tax of US\$15 (15% of US\$100) resulting in the net receipt of US\$85. Distributions, if any, in excess of SAP AG’s current and accumulated earnings and profits will constitute a non-taxable return of capital to a U.S. Holder and will be applied against and reduce the U.S. Holder’s tax basis in his or her ordinary shares. To the extent that such distributions exceed the tax basis of the U.S. Holder in his or her ordinary shares, the excess generally will be treated as capital gain.

In the case of a distribution in euro, the amount of the distribution generally will equal the dollar value of the euro distributed (determined by reference to the spot currency exchange rate on the date of

receipt of the distribution (receipt by the Depositary in the case of a distribution on ADSs)), regardless of whether the holder in fact converts the euro into dollars, and the U.S. Holder will not realize any separate foreign currency gain or loss (except to the extent that such gain or loss arises on the actual disposition of foreign currency received).

Dividends paid by SAP AG generally will constitute “portfolio income” for purposes of the limitations on the use of passive activity losses (and, therefore, generally may not be offset by passive activity losses) and as “investment income” for purposes of the limitation on the deduction of investment interest expense. Dividends paid by SAP AG will not be eligible for the dividends received deduction generally allowed to U.S. corporations under Section 243 of the Code. Dividends paid by SAP AG after December 31, 2002 are treated as qualified dividends subject to capital gains rates as provided by the Jobs and Growth Tax Reconciliation Act of 2003.

### **Sale or Exchange**

In general, assuming that SAP AG at no time is a passive foreign investment company, upon a sale or exchange of ordinary shares to a person other than SAP AG, a U.S. Holder will recognize gain or loss in an amount equal to the difference between the amount realized on the sale or exchange and the U.S. Holder’s adjusted tax basis in the ordinary shares. Such gain or loss will be capital gain or loss and will be long-term capital gain (taxable at a reduced rate for individuals) if the ordinary shares were held for more than one year. The deductibility of capital losses is subject to significant limitations. Upon a sale of ordinary shares to SAP AG, a U.S. Holder may recognize capital gain or loss or, alternatively, may be considered to have received a distribution with respect to the ordinary shares, in each case depending upon the application to such sale of the rules of Section 302 of the Code.

Deposit and withdrawal of ordinary shares in exchange for ADSs by a U.S. Holder will not result in its realization of gain or loss for U.S. federal income tax purposes.

### **Foreign Tax Credit**

In general, in computing its U.S. federal income tax liability, a U.S. Holder may elect for each taxable year to claim a deduction or, subject to the limitations on foreign tax credits generally, a credit for foreign income taxes paid or accrued by it. For U.S. foreign tax credit purposes, subject to the applicable limitations under the foreign tax credit rules, the 15% German tax that is treated as having been withheld from dividends paid to a U.S. Holder will be eligible for credit against the U.S. Holder’s federal income tax liability. Thus, in the numerical example set out above, a U.S. Holder who receives a cash distribution of US\$85 from SAP AG (US\$100 of the initial distribution net of US\$20 of German withholding tax and US\$1.10 of surtax plus the Treaty refund of US\$6.10) will be treated as having been subject to German withholding tax in the amount of US\$15 (15% of US\$100) and will be able to claim the U.S. foreign tax credit, subject to applicable foreign tax credit limitations, in the amount of US\$15.

For U.S. foreign tax credit purposes, dividends paid by SAP AG generally will be treated as foreign-source income. For tax years beginning before January 1, 2007, dividends paid by SAP AG will be treated as “passive income” (or in the case of certain holders, as “financial services income”) and, for tax years beginning after December 31, 2006, dividends paid by SAP AG will be treated as “passive category income” (or in the case of certain holders, as “general category income”). Gains or losses realized by a U.S. Holder on the sale or exchange of ordinary shares generally will be treated as U.S.-source gain or loss.

The availability of foreign tax credits depends on the particular circumstances of each U.S. Holder. U.S. Holders are advised to consult their own tax advisors.

### **Passive Foreign Investment Company Considerations**

**Classification as a PFIC.** Special and adverse U.S. tax rules apply to a U.S. Holder that holds an interest in a “passive foreign investment company” (a “PFIC”). In general, a PFIC is any non-U.S. corporation,



if (i) 75% or more of the gross income of such corporation for the taxable year is passive income (the “income test”) or (ii) the average percentage of assets (by value) held by such corporation during the taxable year that produce passive income (e.g., dividends, interest, royalties, rents and annuities) or that are held for the production of passive income is at least 50% (the “asset test”). A corporation that owns, directly or indirectly, at least 25% by value of the stock of a second corporation must take into account its proportionate share of the second corporation’s income and assets in applying the income test and the asset test.

Based on current projections concerning the composition of SAP AG’s income and assets, SAP AG does not believe that it will be treated as a PFIC for its current or future taxable years. However, because this conclusion is based on our current projections and expectations as to its future business activity, SAP AG can provide no assurance that it will not be treated as a PFIC in respect of its current or any future taxable years.

**Consequences of PFIC Status.** If SAP AG is treated as a PFIC for any taxable year during which a U.S. Holder holds ordinary shares, then, subject to the discussion of the qualified electing fund (“QEF”) and “mark-to-market” rules below, such U.S. Holder generally will be subject to a special and adverse tax regime with respect to any gain realized on the disposition of the ordinary shares and with respect to certain “excess distributions” made to it by SAP AG. The adverse tax consequences include taxation of such gain or excess distribution at ordinary income rates and payment of an interest charge on tax, which is deemed to have been deferred with respect to such gain or excess distributions. Under the PFIC rules, excess distributions include dividends or other distributions received with respect to the ordinary shares, if the aggregate amount of such distributions in any taxable year exceeds 125% of the average amount of distributions from SAP AG made during a specified base period.

In some circumstances, a U.S. Holder may avoid certain of the unfavorable consequences of the PFIC rules by making a QEF election in respect of SAP AG. A QEF election effectively would require an electing U.S. Holder to include in income currently its pro rata share of the ordinary earnings and net capital gain of SAP AG. However, a U.S. Holder cannot elect QEF status with respect to SAP AG unless SAP AG complies with certain reporting requirements and there can be no assurance that SAP AG will provide such information.

A U.S. Holder that holds “marketable” stock in a PFIC may, in lieu of making a QEF election, also avoid certain unfavorable consequences of the PFIC rules by electing to mark the PFIC stock to market at the close of each taxable year. SAP AG expects that the ordinary shares will be “marketable” for this purpose. A U.S. Holder that makes the mark-to-market election will be required to include in income each year as ordinary income an amount equal to the excess, if any, of the fair market value of the stock at the close of the year over the U.S. Holder’s adjusted tax basis in the stock. If, at the close of the year, the U.S. Holder’s adjusted tax basis exceeds the fair market value of the stock, then the U.S. Holder may deduct any such excess from ordinary income, but only to the extent of net mark-to-market gains previously included in income. Any gain from the actual sale of the PFIC stock will be treated as ordinary income, and any loss will be treated as ordinary loss to the extent of net mark-to-market gains previously included in income.

#### Taxation of Holders of ADSs or Ordinary Shares in Other Countries

HOLDERS OR POTENTIAL HOLDERS OF ADSs OR ORDINARY SHARES WHO ARE RESIDENT OR OTHERWISE TAXABLE IN COUNTRIES OTHER THAN GERMANY AND THE UNITED STATES ARE URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING THE OVERALL TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF ADSs OR ORDINARY SHARES.

#### DOCUMENTS ON DISPLAY

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended. In accordance with these requirements, we file reports and furnish other information as a foreign private issuer with the SEC. These materials, including this Annual Report on Form 20-F and the exhibits thereto, may be inspected and copied at the SEC’s Public Reference Room at 100 F Street, N.E., Room 1580,