

preemptive rights may be excluded under certain circumstances by a shareholders' resolution (approved by 75% of the votes cast at the General Meeting of Shareholders) or by the Executive Board authorized by such shareholders' resolutions and subject to the consent of the Supervisory Board.

#### **Liquidation**

If SAP AG were to be liquidated, any liquidation proceeds remaining after all of our liabilities were paid would be distributed to our shareholders in proportion to their shareholdings.

#### **Disclosure of Shareholdings**

SAP AG's Articles of Incorporation do not require shareholders to disclose their share holdings. The German Securities Trading Act (Wertpapierhandelsgesetz), however, requires holders of voting securities of SAP AG to notify SAP AG and the Federal Financial Supervisory Authority of the number or shares they hold if that number reaches, exceeds or falls below specified thresholds. These thresholds are 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% of the corporation's outstanding voting rights. In respect of certificates representing shares, the notification requirement shall apply exclusively to the holder of the certificates. In addition, the German Securities Trading Act also obliges anyone who holds, directly or indirectly, financial instruments that result in an entitlement to acquire, on one's initiative alone and under a legally binding agreement, shares in SAP AG, to notify SAP AG and the Federal Financial Supervisory Authority if the thresholds mentioned above have been reached, exceeded or fallen below, with the exception of the 3% threshold. In connection with this notification obligation positions in voting rights and other financial instruments have to be aggregated.

#### **Exchange Controls and Other Limitations Affecting Security Holders**

The euro is a fully convertible currency. At the present time, Germany does not restrict the export or import of capital, except for

investments in certain areas in accordance with applicable resolutions adopted by the United Nations and the European Union. However, for statistical purposes only, every individual or corporation residing in Germany ("Resident") must report to the German Central Bank (Deutsche Bundesbank), subject only to certain immaterial exceptions, any payment received from or made to an individual or a corporation residing outside of Germany ("Non-Resident") if such payment exceeds €12,500 (or the equivalent in a foreign currency). In addition, German Residents must report any claims against or any liabilities payable to Non-Residents if such claims or liabilities, in the aggregate, exceed €5 million (or the 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.

#### **TAXATION**

##### **General**

The following discussion is a summary of certain material German tax and U.S. federal income tax consequences of the acquisition, ownership and disposition of our ADRs or ordinary shares to a U.S. Holder. In general, a U.S. Holder (as hereinafter defined) is any beneficial owner of our ADRs or ordinary shares that (i) is a citizen or resident of the U.S. or a corporation organized under the laws of the U.S. 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) is not a resident of Germany for purposes of the income tax treaty between the

U.S. and Germany (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 and Capital and to certain other Taxes, as amended by the Protocol of June 1, 2006 and as published in the German Federal Law Gazette 2008 vol. II pp. 611/851; the "Treaty"); (iii) owns the ADRs or ordinary shares as capital assets; (iv) does not hold the ADRs or ordinary shares as part of the business property of a permanent establishment or a fixed base in Germany; and (v) is fully entitled to the benefits under the Treaty with respect to income and gain derived in connection with the ADRs or ordinary shares.

THE FOLLOWING IS NOT A COMPREHENSIVE DISCUSSION OF ALL GERMAN TAX AND U.S. FEDERAL INCOME TAX CONSEQUENCES THAT MAY BE RELEVANT FOR U.S. HOLDERS OF OUR ADRS OR ORDINARY SHARES. THEREFORE, U.S. HOLDERS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING THE OVERALL GERMAN TAX AND U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE ACQUISITION, OWNERSHIP AND DISPOSITION OF OUR ADRS OR ORDINARY SHARES IN LIGHT OF THEIR PARTICULAR CIRCUMSTANCES, INCLUDING THE EFFECT OF ANY STATE, LOCAL OR OTHER FOREIGN OR DOMESTIC LAWS.

#### **German Taxation**

The summary set out below is based on German tax laws, interpretations thereof and applicable tax treaties to which Germany is a party and that are in force at the date of this report; it is subject to any changes in such authority occurring after that date, potentially with retroactive effect, that could result in German tax consequences different from those discussed below. 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. For additional information on the Depositary and the fees associated with SAP's ADR program see "Item 12. Description of Securities Other Than Equity Securities – American Depositary Shares."

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

#### **German Taxation of Dividends**

Under German income tax law, the full amount of dividends distributed by a company is generally subject to German withholding tax at a domestic rate of 25% plus a solidarity surtax of 5.5% (effectively 1.375% of dividends before withholding tax), resulting in an aggregate withholding tax rate from dividends of 26.375%. Non-resident corporate shareholders will generally be entitled to a refund in the amount of two fifths of the withholding tax (including solidarity surtax). This does not preclude a further reduction of withholding tax, if any, available under a relevant tax treaty.

Generally, for many non-resident shareholders the withholding tax rate is currently reduced under applicable income tax treaties. Rates and refund procedures may vary according to the applicable treaty. To reduce the withholding tax to the applicable treaty tax rate a non-resident shareholder must apply for a refund of withholding taxes paid. Claims for refund, if any, are made on a special German claim for refund form, which must be filed with the German Federal Tax Office (Bundeszentralamt für Steuern, D-53221 Bonn, Germany; <http://www.bzst.de>). The relevant forms can be obtained from the German Federal Tax Office or from German embassies and consulates. For details, such non-resident shareholders are urged to consult their own tax advisors. Special rules apply for the refund to U.S. Holders (we refer to the below section "Refund Procedures for U.S. Holders").

## Refund Procedures for U.S. Holders

Under the Treaty, a partial refund of the 25% withholding tax equal to 10% of the gross amount of the dividend and a full refund of the solidarity surtax can be obtained by a U.S. Holder. Thus, for each US\$100 of gross dividends paid by SAP AG to a U.S. Holder, the dividends (which are dependent on the euro/dollar exchange rate at the time of payment) will be initially subject to a German withholding tax of US\$26.375, of which US\$11.375 may be refunded under the Treaty. As a result, a U.S. Holder effectively would receive a total dividend of US\$85 (provided the euro/dollar exchange rate at the time of payment of the dividend is the same as at the time of refund, otherwise the effective dividend may be higher or lower).

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 Data Medium Procedure participant) 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 Federal Tax Office (Bundeszentralamt für Steuern, D-53221 Bonn, Germany). The German claim for refund form may be obtained from the German tax authorities at the same address where applications are filed, from the Embassy of the Federal Republic of Germany, 2300 M Street NW, Washington, DC 20037, or can be downloaded from the homepage of the German Federal Tax Office (<http://www.bzst.de>).

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 (generally on an IRS Form 8802, which will not be processed unless a user fee is paid) with the Internal Revenue Service,

P.O. Box 71052, Philadelphia, PA 19176-6052. U.S. Holders should consult their own tax advisors regarding how to obtain an IRS Form 6166.

An IT-supported quick-refund procedure is available for dividends received (the "Data Medium Procedure – DMP"). If the U.S. Holder's bank or broker elects to participate in the DMP, it will perform administrative functions necessary to claim the Treaty refund for the beneficiaries. The refund beneficiaries must confirm to the DMP participant that they meet the conditions of the Treaty provisions and that they authorize the DMP participant to file applications and receive notices and payments on their behalf. Further each refund beneficiary must confirm that (i) it is the beneficial owner of the dividends received; (ii) it is resident in the U.S. in the meaning of the Treaty; (iii) it does not have its domicile, residence or place of management in Germany; (iv) the dividends received do not form part of a permanent establishment or fixed base in Germany; and (v) it commits, due to its participation in the DMP, not to claim separately for refund.

The beneficiaries also must provide an IRS Form 6166 certification with the DMP participant. The DMP participant is required to keep these documents in its files and prepare and file a combined claim for refund with the German tax authorities by electronic media. The combined claim provides evidence of a U.S. Holder's personal data including its U.S. Tax Identification Number.

The German tax authorities reserve the right to audit the entitlement to tax refunds for several years following their payment pursuant to the Treaty in individual cases. The DMP participant must assist with the audit by providing the necessary details or by forwarding the queries to the respective refund beneficiaries.

The German tax authorities will issue refunds denominated in euros. In the case of shares held through banks or brokers participating in the Depository, the refunds will be issued to the Depository, which will convert

the refunds to dollars. The resulting amounts will be paid to banks or brokers for the account of the U.S. Holders.

German Taxation of Capital Gains

Under German income tax law, a capital gain derived from the sale or other disposition of ADRs or ordinary shares by a non-resident shareholder is subject to income tax in Germany only if such shareholder has held, directly or indirectly, ADRs or ordinary shares representing 1% or more of the registered share capital of a company at any time during the five-year period immediately preceding the sale or other disposition.

Generally, a capital gain derived from the sale or other disposition of ADRs or ordinary shares by a non-resident corporate shareholder is, in principle, exempt from corporate income 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 of ADRs or ordinary shares by a non-resident corporate shareholder is exempt and a portion of 5% of a capital gain derived is subject to corporate income tax.

However, a U.S. Holder of ADRs or ordinary shares that qualifies for benefits under the Treaty is not subject to German income or corporate income tax on the capital gain derived from the sale or other disposition of ADRs or ordinary shares.

German Gift and Inheritance Tax

Generally, a transfer of ADRs or ordinary shares by a shareholder at death or by way of gift will be subject to German gift or inheritance tax, respectively, if (i) the decedent or donor, or the heir, donee or other transferee is resident in Germany at the time of the transfer, or with respect to German citizens who are not resident in Germany, if the decedent or donor, or the heir, donee or other transferee has not been continuously outside of Germany for a period of more than five years; (ii) the ADRs or ordinary

shares are part of the business property of a permanent establishment or a fixed base in Germany; or (iii) the ADRs or ordinary shares subject to such transfer form part of a portfolio that represents 10% or more of the registered share capital of the Company and has been held, directly or indirectly, by the decedent or donor, respectively, at the time of the transfer, actually or constructively together with related parties.

However, the right of the German government to impose gift or inheritance tax on a non-resident shareholder may be limited by an applicable estate tax treaty. In the case of a U.S. Holder, a transfer of ADRs or ordinary shares by a U.S. Holder at death or by way of gift generally will not be subject to German gift or inheritance tax by reason of the estate tax treaty between the U.S. and Germany (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 vol. II page 847, as amended by the Protocol of December 14, 1998 and as published on December 21, 2000, German Federal Law Gazette 2001 vol. II, page 65; the "Estate Tax Treaty") so long as the decedent or donor, or the heir, donee or other transferee was not domiciled in Germany for purposes of the Estate Tax Treaty at the time the gift was made, or at the time of the decedent's death, and the ADRs or ordinary shares were not held in connection with a permanent establishment or a fixed base in Germany. In general, the Estate Tax Treaty provides a credit against the U.S. federal gift or estate tax liability for the amount of gift or inheritance tax paid in Germany, subject to certain limitations, in a case where the ADRs or ordinary shares are subject to German gift or inheritance tax and U.S. federal gift or estate tax.

Other German Taxes

There are currently no German net worth, transfer, stamp or other similar taxes that would apply to a U.S. Holder on the acquisition, ownership, sale or other disposition of our ADRs or ordinary shares.

**U.S. Taxation**

The following discussion applies to U.S. Holders only if the ADRs and ordinary shares are held as capital assets for tax purposes. It 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 ADRs 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 ADRs or ordinary shares through partnerships or other pass-through entities.

The summary set out 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 report. Any such authority may be repealed, revoked or modified, potentially 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.

For U.S. federal income tax purposes, a U.S. Holder of ADRs 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 ADRs representing an ownership interest in ordinary shares.

**U.S. Taxation of Dividends**

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 generally be taxed to U.S. Holders as ordinary dividend income.

As discussed above, a U.S. Holder may obtain a refund of German withholding tax under the Treaty to the extent that the German withholding tax exceeds 15% of the dividend distributed. Thus, for each US\$100 of gross dividends paid by SAP AG to a U.S. Holder, the dividends (which are dependent on the euro/dollar exchange rate at the time of payment) will be initially subject to German withholding tax of US\$25 plus US\$1.375 solidarity surtax, and the U.S. Holder will receive US\$73.625. A U.S. Holder who obtains the Treaty refund will receive from the German tax authorities an additional amount in euro that would be equal to US\$11.375. 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 (provided the euro/dollar exchange rate at the time of payment of the dividend is the same as at the time of refund, otherwise the effective dividend may be higher or lower).

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, or receipt by the Depositary in the case of a distribution on ADRs), 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).

However, a U.S. Holder may be required to recognize foreign currency gain or loss on the receipt of a refund in respect of German withholding tax to the extent the U.S. dollar value of the refund differs from the U.S. dollar equivalent of that amount on the date of receipt of the underlying dividend.

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 to an individual after December 31, 2002 and received prior to January 1, 2013 are treated as "qualified dividends" subject to capital gains rates, i.e. at a maximum rate of 15%, if SAP AG was not in the prior year and, is not in the year in which the dividend is paid, a passive foreign investment company ("PFIC"). Based on our audited financial statements and relevant market and shareholder data, we believe that we were not treated as a PFIC for U.S. federal income taxes with respect to our 2011 tax year. In addition, based on our audited financial statements and our current expectations regarding the value and nature of our assets, the sources and nature of our income, and relevant market and shareholder data, we do not anticipate becoming a PFIC for the 2012 tax year.

#### **U.S. Taxation of Capital Gains**

In general, assuming that SAP AG at no time is a PFIC, 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 a capital gain or loss and will be considered a 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 a 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 ADRs by a U.S. Holder will not result in its realization of gain or loss for U.S. federal income tax purposes.

#### **U.S. 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, German tax withheld from dividends paid to a U.S. Holder, up to the 15% provided under the Treaty, will be eligible for credit against the U.S. Holder's federal income tax liability or, if the U.S. Holder has elected to deduct such taxes, may be deducted in computing taxable income.

For U.S. foreign tax credit purposes, dividends paid by SAP AG generally will be treated as foreign-source income and 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.

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

Special and adverse U.S. tax rules apply to a U.S. Holder that holds an interest in a passive foreign investment company (PFIC). 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