

Munich

**DOING BUSINESS IN GERMANY**



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Ebner Stolz has offices in Berlin, Bonn, Bremen, Cologne, Düsseldorf, Frankfurt, Hamburg, Hannover, Karlsruhe, Leipzig, Munich, Reutlingen, Siegen, and Stuttgart.

As the market leader in its segment, the firm primarily serves mid-sized industrial, retail and service businesses in all sectors and of all sizes.





In keeping with the international orientation of mid-sized companies, it serves both domestic companies that operate in other countries, and foreign companies with economic interests in Germany, helping them meet German legal requirements and supporting them internationally through close cooperation with its partners in an international network. Corporate groups that operate internationally can benefit from the Global Concierge Service that Ebner Stolz offers. As a kind of “one stop shop”, this service provides a contact person who coordinates consulting services with experts both in Germany and abroad, thus ensuring seamless service.

This guide to Doing Business in Germany is intended to provide an initial overview of the political, economic, legal and tax environment for investing in this country, so as to facilitate potential investors’ decision-making about a German business commitment.

Your contacts at Ebner Stolz will be more than happy to answer any questions you may have.

To find out more about Ebner Stolz, visit us at [www.ebnerstolz.de/en](http://www.ebnerstolz.de/en)

# CHAPTER 1

## INTRODUCING GERMANY

### GEOGRAPHY AND CLIMATE

With an area of about 357,000 km<sup>2</sup>, Germany is the fourth-largest country in the European Union, following France, Spain and Sweden.

Centrally located on the continent, Germany has nine neighbouring countries – more than any other country in Europe.

In the north, Germany has access to the North Sea and the Baltic Sea; in the south it is bordered by the Alps, the highest mountain range in Europe.

Germany has a temperate climate.

### POLITICAL SYSTEM

The Federal Republic of Germany is a democratic country. It consists of 16 federal states. On 3 October 1990 the Federal Republic of Germany, which until that date consisted of (from north to south) Schleswig-Holstein, Hamburg, Bremen, Berlin, Lower Saxony, North Rhine-Westphalia, Hesse, Rhineland-Palatinate, Saarland, Baden-Wuerttemberg and Bavaria, was reunified with the German Democratic Republic, comprising Mecklenburg-Vorpommern, Brandenburg, Saxony-Anhalt, Saxony and Thuringia. There are still some differences between the two halves of the country in economic power, infrastructure, salaries, social security contributions and pensions, but they are narrowing from year to year.

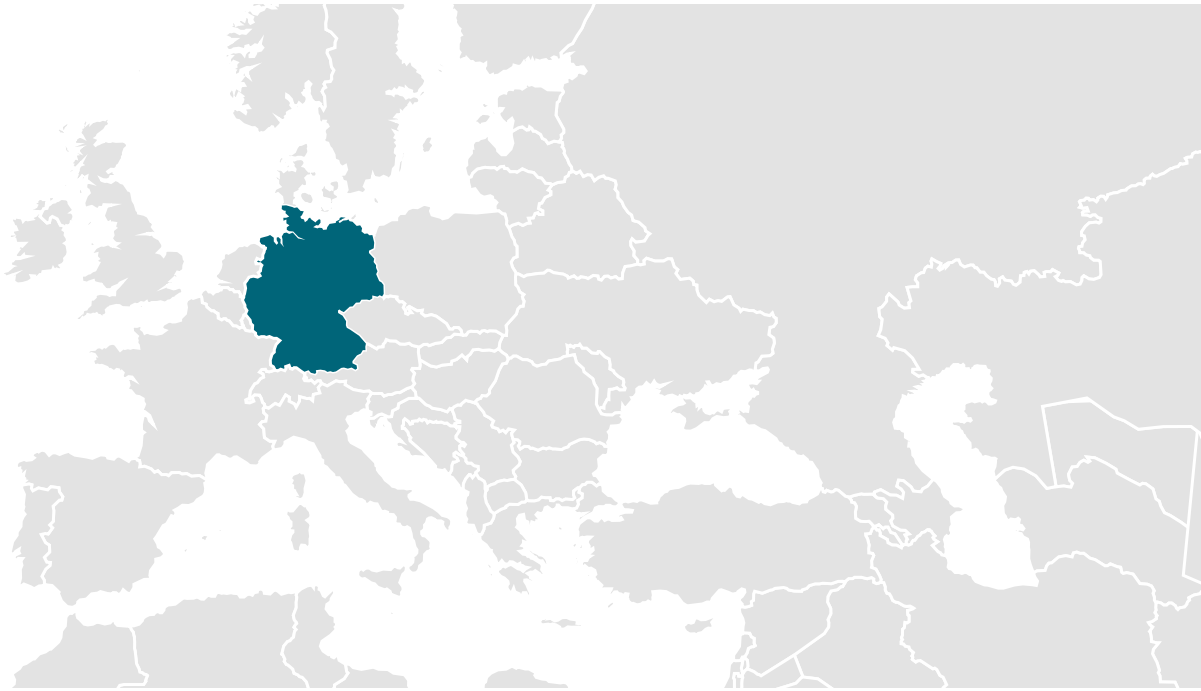
Every German citizen is entitled to vote provided he or she has reached a certain voting age. At the grass-roots level, the nation votes for a regional parliamentary body, usually called a municipal or town council. Each federal state (Bundesland) also has its own parliament, elected by the state's voters. Voting age for the municipal as well as the state parliaments elections is 16 or 18 years, depending on the federal state. Each state government appoints delegates to the Bundesrat, the upper house of the national parliament. This enables the states to exercise a considerable influence over national legislation.

The Bundestag, the lower house of parliament, is the highest authority within the political system. It is elected by the nation in a procedure parallel to the one for the state parliaments for a term of four years. Persons 18 years of age and over are eligible to vote in the federal election. The Bundestag appoints ministers and nominates the Federal Chancellor. The Federal Assembly (Bundesversammlung), a specially constituted body consisting of members of the Bundestag and of the state parliaments, elects the President of the Federal Republic of Germany. All parliaments are overseen by the Constitutional Court (Bundesverfassungsgericht).

The capital of Germany is Berlin, which is also the headquarters for numerous political institutions.

The German governmental system has a clear separation of powers. The legislative branch (Bundesrat and Bundestag) enacts legislation. The executive branch (the administration) implements the laws. The judiciary exercises its judicial power through the courts.





## LEGAL SYSTEM

The German constitution is known as the Basic Law (Grundgesetz) and is the legal basis for all other sectors of the law. Importantly, the Basic Law takes precedence over individual state laws. The individual parts of the Basic Law are referred to as articles, rather than sections as for all other German laws. Article 1 is the most important one: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority". All the other articles follow this principle.

German law can be divided into four broad categories: civil law, public law, criminal law and procedural law. As for all laws, the German Basic Law is the underlying law here as well.

Civil law governs interactions among private parties. Public law governs relationships between private parties and institutions of government, and also provides the legal framework for interactions among the states. Criminal law is in one sense a subcategory of public law, but in another is an in-

dependent category by itself. Criminal law serves to punish violations of the law. It is set out in the Criminal Code and is the basis for decisions in all criminal proceedings. Procedural law is likewise a part of public law in one sense, but like criminal law, it is treated as a separate category. It governs the way in which the courts decide matters in controversy. The distinction between public law and civil law is fundamental to the legal system.

## POPULATION

The current population numbers 84 million, making Germany the 19th most populous country in the world. Population density is about 233 persons per square kilometre. The country has about 80 cities with more than 100,000 inhabitants.

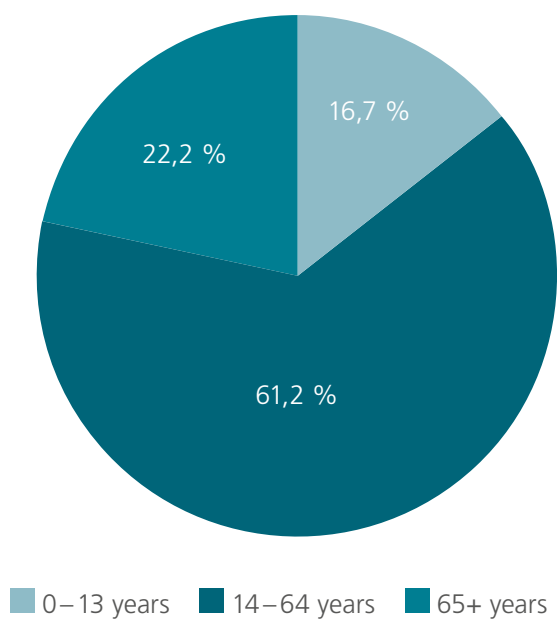
Germany is divided into federal states. Each state has its own capital. For historical reasons, the cities of Berlin, Hamburg and Bremen also have the status of states.

The largest state is Bavaria, with 70,550 km<sup>2</sup>. The smallest is Bremen, with 419 km<sup>2</sup>.

Berlin, with about 4,127 inhabitants per km<sup>2</sup>, is the most densely populated state.

Due to a low birth rate, the native-born population is expected to decline in coming years. Nevertheless, the population is expected to remain at a similar level due to immigration. According to the German Federal Statistical Office, in 2021, 20.56 million people with a migrant background were registered in Germany; 1,323,466 people moved to Germany in 2021 alone. The country's largest ethnic groups are the Turks, followed by Poles and Syrians.

#### Population distribution by age group: 2021<sup>2</sup> % SHARE



#### LANGUAGE

German is the official language. English is the next most popular language in Germany. Many Germans also speak the languages of nearby countries, including French, Dutch, Polish, Spanish and Italian.

#### CURRENCY

In January 2002, the euro was introduced as the cash currency in Germany, replacing the German mark. The current US dollar exchange rate for EUR 1 is \$ 1.07 (February 2023). At present, the euro is the currency of 19 countries in the European Union.

#### BUSINESS HOURS

Shop opening times are governed by each German state individually. Permission to stay open on Sundays and public holidays can be granted in exceptional cases.

#### PUBLIC HOLIDAYS

Some public holidays vary from one state to another. The holidays observed nationwide are:

› New Year's Day	1 January
› Good Friday	Friday before Easter Sunday
› Easter Monday	Monday after Easter Sunday
› Labour Day	1 May
› Ascension Day	40 days after Easter Sunday (on a Thursday)
› Whit Monday	49 days after Easter Sunday
› German Unity Day	3 October
› Christmas Day	25 December
› Boxing Day	26 December

Berlin, Hamburg, Bremen, Lower Saxony and Schleswig-Holstein have 9 public holidays a year; Baden-Wuerttemberg, Bavaria, Saxony and Saxony-Anhalt have 12. There are also other public holidays specific to individual cities.

1) See <https://de.statista.com/statistik/daten/studie/28347/umfrage/zuwanderung-nach-deutschland>

2) See <https://de.statista.com/statistik/daten/studie/1365/umfrage/bevoelkerung-deutschlands-nach-altersgruppen>

# CHAPTER 2

## GOVERNMENT POLICIES AND BUSINESS REGULATORY ENVIRONMENT

### BUSINESS REGULATIONS

Where access to investments and corporate formations is involved, Germany generally makes no distinction between German citizens and citizens of other countries.

However, if nationals of a non-EU Member State wish to live and work in Germany, they must obtain either a limited-term residence permit (Aufenthalts-erlaubnis), supplemented with a permit to engage in gainful employment, or a permanent residence permit (Niederlassungserlaubnis). Because of the freedom of movement and freedom of residence within the European Union, nationals of an EU Member State do not need any such permit.

If a business is to take the legal form of a corporation (Kapitalgesellschaft), the company must be registered in the Commercial Register (Handelsregister) at its formation. If you plan to do business as a sole proprietorship or partnership, you can choose the legal form of a registered merchant (eingetragener Kaufmann) or a commercial partnership (Personenhandelsgesellschaft). These too must be entered in the Commercial Register (see Chapter 4).

Additionally, depending on the specific line of business you plan to engage in, there are other registration obligations, such as registering the founding of a commercial operation (Gewerbebetrieb) with the local authorities. Some businesses, such as restaurants, must obtain government permits and are subject to supervision. In some professions with protected job titles, one must be admitted to the relevant professional organisation (as in the case of lawyers, tax advisors, and architects), or recognised by the providers of social insurance benefits (as in the case of health insurers' registration of doctors and hospitals). You should also find out whether you must present professional certification in order to conduct a business, and whether comparable credentials acquired in other countries are recognised in Germany.

### BANK ACCOUNTS

In general, foreign nationals competent to do business are not restricted from opening a bank account in Germany. Normally, the bank where the account is opened will review the potential client's credit status and then decide whether to offer an account, and on what terms. To meet legal requirements,

for example under the German Money Laundering Act (Geldwäschegesetz), the Financial Account Information Act (Finanzkonten-Informationsgesetz), and the US FATCA, the bank will request personal information and may also ask for information about cross-border business relationships. This information is also requested when German residents open an account.

Any legally competent consumer who is lawfully resident in the EU is entitled to open an account in Germany, though it will be a “basic account” that normally does not allow access to borrowing.

## **COPYRIGHT AND INTELLECTUAL PROPERTY (IP)**

Germany has an extensive range of laws and regulations to protect intellectual property. The laws’ protection applies irrespective of whether the rights holder resides in Germany or elsewhere, or is a citizen of Germany or some other country. If

rights are granted to use another’s intellectual property, normally a royalty is payable.

A patent from the German Patent and Trade Mark Office can be applied for on technical inventions that are novel, are based on an inventive step, and have a commercial application. The patent gives the patentee the exclusive right to use the patent for 20 years, and action can be brought against third parties who use the patent without authorisation. A patent can also be applied for from the European Patent Office. A European Patent grants the patentee the same rights protecting the patent in all 39 Contracting States of the European Patent Convention. The Contracting States include not only the EU Member States, but also the United Kingdom, Switzerland, Norway, Turkey, and others.

Distinctive signs of all kinds, particularly word marks, and including personal names, illustrations, letters, numbers, sound marks, three-dimensional figures, including the form of an item or its



Berlin

packaging, as well as other designs capable of distinguishing a company's goods or services from those of other companies, can be protected as trade marks. To obtain this protection, one must apply for registration in the Trade Mark Register of the German Patent and Trade Mark Office. Normally this gives the mark holder the exclusive right to use the mark for ten years, and to prevent others from using the mark, a symbol identical to the mark, or a confusingly similar mark. Subject to the terms of trade mark law, a domain name on the Internet can also be protected if it reproduces a mark. In addition, a domain name may also be protected by the name laws in civil law, or under the terms of the laws against unfair competition, if the use of a domain name is misleading.

One can also apply to have a utility model (Gebrauchsmuster) recognised by the German Patent and Trade Mark Office. Utility models, also known as "petty patents", cover inventions that are novel, are based on an inventive step, and have a commercial application. For a period of ten years, the utility model can be used only by its registered holder. However, registering a utility model does not keep someone else from registering a patent at a later date that may interfere with utility model rights. Nevertheless, that patentee cannot exercise the patent right without the consent of the holder of the utility model.

A design that is novel and unique – i.e., if its overall impression differs from that of another design for an informed user – can be registered with the German Patent and Trade Mark Office. The designer, or the designer's successor, has the right to use the registered design for 25 years from the application date.

German Patent and Trade Mark Office  
(main office)  
Zweibrückenstr. 12  
80331 Munich  
Tel.: +49 89 2195-1000  
Email: [info@dpma.de](mailto:info@dpma.de)  
[www.dpma.de](http://www.dpma.de)

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## DATA PROTECTION

Data privacy and security are protected by the General Data Protection Regulation (GDPR), an EU law regulation with scope for all EU member states. The GDPR addresses the protection of natural persons with regard to the processing of personal data and on the free movement of such data. The GDPR aims primarily to give control to individuals over their personal data and to simplify the regulatory environment for international business by unifying the regulation within the EU. Controllers and processors of personal data (e. g. companies) need to put in place appropriate technical and organizational measures to implement the data protection principles. Business processes that handle personal data need to be designed and built in line with the principles and provide safeguards to protect data (for example, using pseudonymization or full anonymization where appropriate).

The GDPR is transferred into German law by the Federal Data Protection Act (Bundesdatenschutzgesetz). In line with the GDPR this act is intended to prevent individuals' rights of personality from being violated by the handling of personal data. The rules apply to both public and private entities, and particularly companies, that process, use or gather data for business purposes, either using data processing systems or by non-automated means.

The Federal Data Protection Act is supplemented by the individual states' own data protection acts.

## **MERGERS AND MONOPOLIES**

To keep business combinations from restraining competition, or even developing a monopoly position, controls over business combinations (mergers) are provided if the companies involved had total worldwide revenues of more than EUR 500 million during the last financial year prior to the merger, and if at least one participating company generated more than EUR 50 million in revenues in Germany, and another participating company had revenues of more than EUR 17.5 million. Even if the participating companies do not exceed these thresholds, mergers can nevertheless be subject to merger control under certain circumstances.

Business combinations that meet the above criteria must be reported to the Federal Cartel Office (Bundeskartellamt) before the transaction is consummated ([www.bundeskartellamt.de](http://www.bundeskartellamt.de)).

## **IMPORT AND EXPORT CONTROLS**

German foreign trade law is governed by the principle of a free market economy. As a member of the European Union, Germany generally has no restrictions on imports and exports within the customs territory of the Union.

Imports from non-EU countries to Germany are subject to customs requirements, particularly the Customs Code (Zollkodex) and the related regulations, as well as to laws on foreign trade. In general, an import customs declaration is required, which must be submitted to the customs office after crossing the border, together with various documents depending on the customs declaration procedure involved ([www.einfuhr.internetzollanmeldung.de/iza/content.do](http://www.einfuhr.internetzollanmeldung.de/iza/content.do)). Import duties and taxes must generally be paid on imports. There are also import restrictions on certain goods such as agricultural products, medications and chemicals, goods from certain countries subject to embargo, or goods for certain persons, groups or organisations on which the EU has imposed embargoes.

Comparable regulations also govern exports from Germany to non-EU countries. The goods to be exported must be processed using the export procedure that is intended to monitor trade in goods with non-EU countries. Export duties or taxes may be incurred. Export restrictions must also be observed for certain goods, exports to certain countries, or exports to certain persons.

The latest information on these questions is available at [www.zoll.de](http://www.zoll.de).



## **CONSUMER PROTECTION**

There are a great many regulations to protect consumers. They include not only requirements for the production or labelling of products, but also legal requirements, such as on the terms of contracts with consumers or to protect free competition.

## **SUPPLY CHAIN ACT**

The Act on Corporate Due Diligence Obligations in Supply Chains (short: Supply Chain Act) is in force since 2023 and regulates corporate responsibility for respecting human rights in supply chains. The core elements of the due diligence obligations include the establishment of risk management to identify, prevent or minimize the risks of human rights violations and damage to the environment. The Act sets out what preventive and remedial measures are necessary, obliges complaint procedures and regular reporting. Since 2023, the Act initially applies to companies with head office, administrative headquarters, registered office or branch office in Germany and at least 3,000 employees. From 2024 it also applies to companies with at least 1,000 employees in Germany. Fines may be imposed if companies fail to comply with these obligations.

# CHAPTER 3

## BANKING AND FINANCE

### THE BANKING SYSTEM

The German banking system comprises the central bank – the Deutsche Bundesbank – and the commercial banks. The commercial banks have the tasks of offering all forms of services relating to money, and especially granting loans, taking deposits, and conducting payment transactions. The central bank has the task of maintaining price stability and ensuring that the commercial banks remain solvent.

Depending on their guarantors or shareholder structures, commercial banks are categorised as either public-sector banks (Landesbanken, or regional state banks, and Sparkassen savings banks), or credit unions (Genossenschaftsbanken), or privately owned banks. Banks in Germany vary greatly in size. They range from large banks that operate internationally to small banks that only do business regionally. The German banking system is characterised by the full-service bank principle, under which a bank offers numerous banking services, not just a segment of those services such as investment banking.

The individual banks in Germany are supervised by the Federal Financial Supervisory Authority (the Bundesamt für Finanzdienstleistungsaufsicht or BaFin, [www.bafin.de](http://www.bafin.de)). It tracks such matters as whether a bank is adequately capitalised under the Basel capitalisation and liquidity rules (Basel III).

The current German deposit insurance system covers deposits up to EUR 100,000 per client per bank. There is a further insurance system to ensure stability of the financial system at EU level. Experience from the financial and economic crisis of 2008 led the EU Member States in 2013 and 2014 to introduce the European banking union, which provides a uniform supervisory mechanism, a uniform processing mechanism and a shared system for deposit insurance. The participants in the banking union are all the EU States as well as other states that join voluntarily.

## **SOURCES OF FUNDS**

Corporate financing from borrowed funds in Germany continues to be handled primarily through bank borrowing. No fundamental distinctions are made in this regard between German and foreign companies or investors. If the requisite criteria are satisfied, state-aided loans may also be available through special development banks.

Occasionally, but usually more in the area of project finance, financing is obtained through crowd-funding, in which a large number of small financial contributions are gathered from investors.

Leasing or factoring agreements are also frequently used for financing; these make it possible to ease the liquidity needs for capital investments, or to improve a company's liquidity.

Another means of financing in addition to borrowing is investment financing. This enables new partners or shareholders to be added to a partnership or corporation. Another possibility is an open or silent interest of an investor who has no influence over the management of the business.

## **CURRENCY EXCHANGE CONTROL**

At present, German law imposes no restrictions on foreign currency trading in Germany. Both German residents and foreign persons are generally free to acquire and hold foreign and German currency.

Concerning currency transaction volumes, companies domiciled in Germany may be required to report cross-border payments. Financial institutions are subject to more extensive reporting obligations.

## **OTHER FINANCIAL AND INVESTMENT INSTITUTIONS**

The Federal Financial Supervisory Office (BaFin) has the duty of ensuring a functional banking and financial services system in Germany. It supervises banks on the basis of the requirements of European and German law (including the Securities Trading Act, the Depository Act, the Building Society Act, the Savings Banks Act, and more). The degree of supervision depends on the nature and scope of the banking business, and especially on the risks incurred. Supervision focuses primarily on ensuring that the banks have sufficient equity and liquidity, and have established appropriate risk control mechanisms.

# CHAPTER 4

## BUSINESS ENTITIES

### TYPES OF ENTITIES

German company law offers three basic types of legal forms, depending on how and to what extent you plan to do business in Germany, how management responsibilities will be distributed, limitations on personal liability, and flexibility about changes in corporate structure or possible exit scenarios:

› Sole proprietorships

› Partnerships:

Typically, at least one and often several partners manage the partnership's affairs. The partners' personal liability can be limited to a certain degree. In tax terms, partnerships are considered transparent – meaning that there is no taxation at the partnership level. Any sale or transfer of a partner's share is normally possible only with the consent of the remaining partners.

› Corporations:

The company is headed by a CEO, who may also be a shareholder, but who in many cases is appointed as a third party. The shareholders' personal liability is limited to the amount of their investment. The corporation is a separate tax entity, and is thus not transparent. In some cases, selling or transferring a stake in the company may be subject to the consent of the remaining shareholders.

Stuttgart



## SOLE PROPRIETORSHIP

A sole proprietorship is headed by a single person whose entire assets are liable for the entity's liabilities. For that reason, as a rule this legal form is suitable mainly for smaller business operations. A sole proprietorship is initiated with its first business activity. It may be necessary to register or to obtain a permit, depending on the type of business (see Business Regulations in Chapter 2).

If the business is a commercial operation whose nature and scope requires business operations that are organised in a commercial way (a commercial enterprise, or "Handelsgewerbe"), the proprietor must register with the Commercial Register as

a merchant (Kaufmann). A business that is not a commercial enterprise may (but is not required to) be entered in the Commercial Register as an "optionally registrable merchant".

Being recorded in the Commercial Register means that the entity must keep its books in accordance with the German Commercial Code (Handelsgesetzbuch) and must prepare annual financial statements, consisting of a balance sheet and income statement. If a commercial operation is not already required to maintain accounting records by the Commercial Code, it may still have such an obligation under tax regulations if either its revenues exceed EUR 600,000 in a calendar year or its profits exceed EUR 60,000 in a financial year. Otherwise, especially for professionals such as doctors, lawyers, or architects, profits are determined by what is known as the net income approach (Einnahmen-Überschussrechnung), in which cash revenues for a calendar year are netted against cash expenditures.







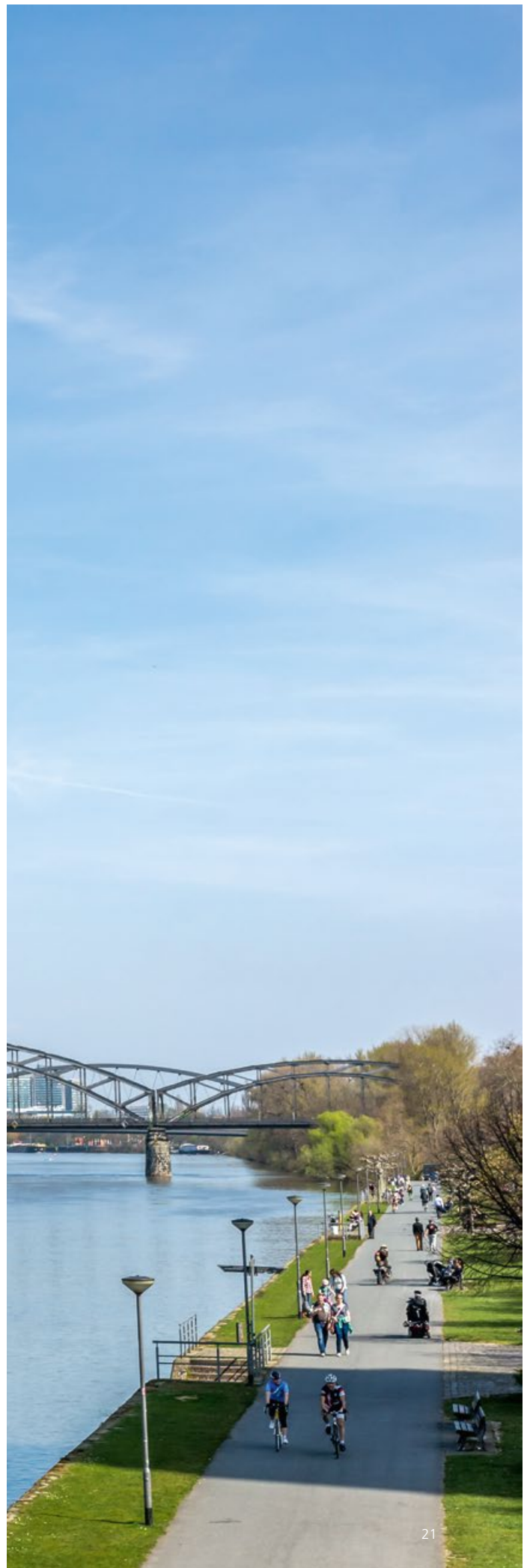
## PARTNERSHIP

The simplest form of partnership, the “civil law association” or Gesellschaft bürgerlichen Rechts (GbR), comes into being as soon as two or more persons do business jointly. The Commercial Code does not require these partnerships to be entered in the Commercial Register. All partners are normally authorised to manage business and represent the partnership. Any provisions to the contrary can be included in the partnership agreement. Additionally, all partners’ entire assets are liable to the partnership’s creditors. This form is especially suitable for smaller business activities. A GbR is required to maintain accounting records if it exceeds the limits under the tax laws (see Sole Proprietorship).

If the entity’s purpose is to run a commercial operation (see Sole Proprietorship), then simply starting to do business establishes a general partnership, or offene Handelsgesellschaft (OHG). This must be entered in the Commercial Register under a business name (the name the partnership uses in business transactions) and the beneficial owners of the OHG must be reported to the Transparency Register. In an OHG as well, all partners are normally authorised to manage business and represent the partnership, unless the partnership agreement provides otherwise. Because the entire assets (business as well as private) of the partners in an OHG are liable for the partnership’s liabilities, this form of partnership is not normally used for larger enterprises. An OHG is always required to maintain accounting records and must prepare annual financial statements each year.



Finally, a partnership intended to run a commercial operation may also be established in the form of a limited partnership, or Kommanditgesellschaft (KG). Here the entire assets of at least one partner must be liable without limitation; this is the general partner (Komplementär). The limited partners (Kommanditisten), if their shares are fully paid up, are liable only up to the amount of their contribution. In practice, this form is often operated as a “GmbH & Co. KG”, in which a corporation in the form of a GmbH (see the section on Corporations) is the general partner, but because of its own legal form, only its corporate assets are liable. A KG must be entered in the Commercial Register and its beneficial owners must be reported to the Transparency Register. Before the entry in the Commercial Register, there is no limitation to the limited partners’ liability. The limited partners cannot manage the partnership or represent it. Instead, management is the duty of either the general partner or a third-party manager. A KG is required to maintain accounting records and must prepare annual financial statements each year. In the case of a GmbH & Co. KG, there may also be reporting obligations (see the section on Corporations).



## CORPORATION

A corporation is an independent legal entity that does not come into existence until it is entered in the Commercial Register. A key feature of a corporation is that its shareholders are not liable up to the full amount of their assets for the corporation's liabilities. Instead, their liability is limited to the amount of the share they hold.

The most common form of corporation in Germany is the limited liability company or Gesellschaft mit beschränkter Haftung (GmbH). Shares in a GmbH may be held by one or more shareholders. Its share capital, called Stammkapital, must be at least EUR 25,000, of which at least one-quarter must be paid up at the time of registration in the Commercial Register. If a portion of the capital is to be supplied through contributions in kind, these contributions must be final before the company applies for registration. All in all, paid up cash contributions and contributions in kind at the time of the application for registration must be at least 50 % of the minimum capitalisation, or EUR 12,500. In order to enter a GmbH in the Commercial Register, the articles of association (Gesellschaftsvertrag) must be submitted; the director (Geschäftsführer) must be appointed unless this appointment is already made in the articles of association; and a list of shareholders must be submitted to the Commercial Register. The list of shareholders is intended to establish transparency about who holds the company's shares. In addition, beneficial owners must be entered in the Transparency Register. In general,

shares of a GmbH may be freely sold and inherited, but the articles of association may impose restrictions. Such restrictions are regularly encountered because of the shareholders' personal relationship with the company. Furthermore, if the shareholders change, the list of shareholders must be amended and resubmitted to the Commercial Register and to the Transparency Register, if beneficial owners change.

The company is managed and represented by one or more appointed directors (Geschäftsführer). They may either be shareholders or serve as third-party managers.

The shareholders exercise their rights at the general meeting (Gesellschafterversammlung), where, for example, the director can be approved or dismissed and the annual financial statements, together with the allocation of profit or loss, are approved. A Supervisory Board or Advisory Board may also be appointed to perform monitoring functions.

If a GmbH has more than 500 employees, it is required to establish a Supervisory Board. A GmbH is required to maintain accounting records and must prepare annual financial statements. The latter must be published in the German Federal Gazette, or Bundesanzeiger. The reporting obligations vary in extent depending on the size of the company.

As a special form of GmbH it is possible to found an "entrepreneurial company", or Unternehmergesellschaft (UG). Its minimum capital may be less

than EUR 25,000, and even as little as EUR 1. The minimum capital must be fully paid up at the time of application for registration in the Commercial Register. The company's corporate name must include the words "Unternehmergeellschaft (haftungsbeschränkt)" ("entrepreneurial company (limited liability)") or "UG (haftungsbeschränkt)", to point out the reduced minimum capital. In all other respects, the rules for a GmbH apply.

The legal form of a stock corporation, or Aktiengesellschaft (AG), is especially suitable for large corporations in which the shareholders' personal relationship with the company is of little or no relevance to business success. One or more shareholders hold the share capital of at least EUR 50,000, which is divided into equal shares of stock (Aktien); par-value shares must have a par value of at least EUR 1. An AG is established when the founders acquire all shares. The par value of the shares must be fully paid up before the company can complete its mandatory registration in the Commercial Register. An AG is managed and represented by its Managing Board (Vorstand), whose work is overseen by the Supervisory Board (Aufsichtsrat), in what is known as a dual-board or two-tier system.

The Managing Board may be composed of one or more persons. If the AG's share capital (in this case called Grundkapital) is greater than EUR 3 million, the Managing Board must have at least two members, unless specified otherwise in the articles of association. The members of the Managing Board are appointed by the Supervisory Board for terms

of not more than five years. Members may be reappointed or have their terms extended beyond the five-year period. The Supervisory Board may also revoke the appointment of a member of the Managing Board, for example if the board member commits a gross breach of duty.

Another unusual feature in Germany is employee "co-determination" in the Supervisory Board. Above a certain staff size, usually more than 500 employees, one third of the members of the Supervisory Board must be recruited from among the employee representatives. In companies with more than 2,000 employees, the supervisory board must have equal representation, i.e. half of the members of the supervisory board must be employee representatives. An AG's shares may normally be sold and inherited at will. However, here again, the articles of association (in this case called a Satzung) may establish limitations. The shareholders exercise their rights at a general meeting (Hauptversammlung), where, for example, they decide on appointing the Supervisory Board, the allocation of the distributable profit, ratification of the acts of the Managing Board and Supervisory Board, and amendments of the articles of association. An AG has the same accounting and reporting obligations as a GmbH which become more extensive the larger the company.

It is also possible to found a “partnership limited by shares”, or *Kommanditgesellschaft auf Aktien* (KGaA), which combines features of a limited partnership with those of a stock corporation. Essentially, this is a stock corporation that is managed and represented, not by a Managing Board, but by general partners. This form of corporation is particularly chosen when one wants to ensure that the general partners will control the company, but also to have the ability to raise capital by issuing stock.

Finally, there is also the possibility of founding a *Societas Europaea*, or SE. This is the legal form for stock corporations in the European Union and the European Economic Area, and makes it possible to establish companies under largely uniform legal principles within the EU or EEA. Like other corporations, an SE has legal personality. Its minimum capitalisation is EUR 120,000. The share capital is divided into shares of stock, and here again each shareholder is liable only up to the amount of capital the shareholder has subscribed. An SE must be domiciled in an EU or EEA country, but may move its domicile at any time to another Member State. Shareholders in an SE exercise their fundamental rights of ownership at the general meeting. The company is managed either under a two-tier system with a managing board and supervisory board, as for an *Aktiengesellschaft*, or under a one-tier system with a board of directors, as is customary in English-speaking countries.

The shares of an SE may be transferred in accordance with the relevant terms of national law. Shares of an SE are not required to be traded on an exchange.

As a rule, an SE is treated in each Member State like a stock corporation formed under the laws of the country where the SE is domiciled.

## OTHERS

At least three members may join together to form a cooperative (*Genossenschaft*), so as to promote their business effectiveness by doing business jointly. For a cooperative to have legal personality, it must be entered in the Cooperatives Register (*Genossenschaftsregister*). A registered cooperative is a legal entity. Some banks in Germany are constituted as cooperatives. One also finds such variants as purchasing cooperatives in the agricultural sector.

Another recognised legal entity is the private law foundation (*Stiftung*). Assets serving one or more specifically defined purposes are usually held in the foundation's endowment for the duration of the foundation. Though a foundation is a legal entity, it has neither partners nor shareholders – only users (beneficiaries). Foundations are often established to provide for succession in a business ownership, or in general are used during a person's life to organise an estate after their death.



## CHAPTER 5 COMPANY FORMATION AND ADMINISTRATION

### FORMING A COMPANY

If you have decided to invest in a new company to be founded in Germany, and once you have clarified the economic questions and chosen the appropriate form of entity (see Chapter 4), before founding the business you must still review the requirements set by law, and meet them where necessary. Some examples:

› If the company is to take the form of a corporation, it will need articles of association. If you choose to form a partnership, it is also advisable to sign a partnership agreement, because otherwise statutory requirements will apply that may not fully meet the partners' needs. In setting up a partnership agreement, you should attend to questions of distributing profits, managing and representing the partnership, and also aspects like exit scenarios and, not least of all, tax impact.



- › You should clarify whether the local Chamber of Industry and Commerce may have objections to the use of the company's name. This might be the case, for example, if there is a too strong resemblance to the names of other companies that already exist. If a name is used that describes what the company does, such as XY Engineering Deutschland GmbH, you should make sure there is no risk of misleading the market.
- › Depending on the type of business activity you intend, various kinds of permits or credentials (Genehmigung, Erlaubnis, Zulassung) may be necessary (see Business Regulations).
- › When an entity is formed, a bank account must be set up in the entity's name, particularly as a place where deposits into the entity's capital can be credited.
- › If your entity is a sole proprietorship, a commercial partnership (KG or OHG) or a corporation, it must be entered in the Commercial Register. The requirements here depend on the form of the entity, and various legal instruments or documents may need to accompany the application. Applications for entry in the Commercial Register are made through a notary. A GmbH, especially, does not exist until it has been entered in the Commercial Register.
- › Legal entities subject to transparency requirements (e.g. GmbH, AG, KG, GmbH & Co. KG) must enter their beneficial owners in the Transparency Register.
- › You may have to report your business to the local trade office (Gewerbeamt).
- › If the Tax Office (Finanzamt) responsible for your location does not send you documentation once you register your business, you must apply to it for a tax ID number (Steuernummer) within one month after you begin operations.
- › If you will have employees, you must also apply to the local Labour Office (Arbeitsamt) for an employer number (Betriebsnummer) for social security purposes. You will further have to register with the employers' liability insurance association (Berufsgenossenschaft) that applies to your business.
- › Employees must be registered with the appropriate public health insurance funds (Krankenkassen).

## SHARES AND CAPITAL STRUCTURES

The capital structure of a business depends on its legal form. For a partnership, the partners agree that each partner will hold a set figure or percentage of the partnership's equity. The amount of a partner's stake is regularly reflected in the partner's capital account.

For a GmbH, the capital is divided into shares called Geschäftsanteile, which must be denominated in whole euros. Each of these stakes or shares may be denominated for a different amount, but their total must add up to the company's capital. The size of a stake in the capital regularly determines how profits are distributed, although the articles of association may set a different standard for distributions.



The share capital of an AG must be divided into shares of stock (Aktien). These may be either par value shares (Nennbetragsaktien) or no-par value shares (Stückaktien). Par value shares must be denominated in amounts of at least one euro. No-par value shares have no par value, but each one represents an equal portion of the share capital, and the amount represented by a single share cannot be less than one euro. Shares are normally registered shares (Namensaktien). But they may also be issued without registration, as bearer shares (Inhabera-ktien), if either the company is listed on an exchange, or there is no entitlement to have each share certified individually and the global certificate (Sammelurkunde) for all shares is on deposit, for example with a central securities depository. Special kinds of shares may be issued, for example that allow for a deviation from the general distribution of profits or distribution of the company assets. Contrary to the general rule that each share confers one vote, these “preference” shares (Vorzugsaktien) may be designated as non-voting shares.

## **DIRECTORS**

The management of partnerships is described among the various forms of business (see Partnerships in Chapter 4).

A GmbH is managed by one or more directors called Geschäftsführer (see Corporation in Chapter 4).

An AG is managed and represented by a Managing Board (Vorstand; see Corporation in Chapter 4).

## **TYPES OF DIRECTORS**

Distinctions among top managers are governed by law only in the case of an AG. If the Managing Board consists of more than one person, the Supervisory Board may appoint a Chairman of the Managing Board – i.e., a Chief Executive Officer – and may also revoke that appointment for cause.

In practice, if there is a multi-person management at a corporation, and also in some cases at a partnership, it is customary for the various managers to be assigned to individual business areas for which they are responsible. For example, a multi-person Managing Board of an AG might include a Chief Executive Officer, a Chief Financial Officer, a Chief Sales Officer, a Chief Product Development Officer, etc.

## **DUTIES OF DIRECTORS**

Directors’ duties particularly include managing the business in all matters that concern it. Directors must exercise the “due care of a prudent businessman” (Sorgfalt eines ordentlichen Geschäftsmannes). A director can be personally liable for breaches of this duty of due care. Multiple directors are authorised to manage the business in common, unless the articles of association provide otherwise.

Furthermore, a director has the task of representing the company in and out of court. In the case of a GmbH, the articles of association may limit the managing director’s power of representation. But

the powers of representation of the Managing Board of an AG cannot be restricted. These board members are normally authorised to represent the company jointly unless provided otherwise in the articles of association.

The directors of a GmbH must provide records of their activities to the general meeting, or to the Supervisory Board if the company has one. Their actions are ratified by the general meeting. For an AG, the Supervisory Board performs the function of monitoring the Managing Board's activities. The general meeting ratifies the actions of both the Managing Board and the Supervisory Board.

## MEETINGS

The shareholders of any form of corporation are expected to hold regular meetings.

At their meeting, the shareholders of a GmbH decide on such matters as:

- › adopting the annual financial statements and the allocation of profits
- › appointing and dismissing directors, and ratifying their actions
- › rules for auditing and supervising management.

The general meeting is called by the directors as provided in the articles of association, and whenever this seems necessary in the best interest of the company. The shareholders must be invited to attend by registered mail with at least one week's advance notice. There is no need for a general meeting if all shareholders give their written approval for action to be taken by written consent.

The general meeting of an AG must be called by the Managing Board at least 30 days in advance. The meeting is called as provided either by law or by the articles of association (ordinary general meeting) and also whenever the company's welfare requires (extraordinary or special general meeting). The general meeting decides on such matters as:

- › appointing the members of the Supervisory Board who are not to be elected as employee representatives
- › allocating the distributable profit
- › ratifying the acts of the Managing Board and Supervisory Board
- › amending the articles of association
- › raising or reducing capitalisation.

The general meeting of a listed AG may also decide on approving the remuneration system for the members of the Managing Board.

## LIQUIDATION

A partnership can be terminated in many different ways. The business assets may be sold, and the resulting net cash may be distributed among the partners, so that the partnership is liquidated. However, if all partners but one leave, a partnership may also automatically accrue to the single remaining partner and be terminated in that way. The partnership can also be terminated through division (Realteilung), in which each partner receives a part of the business. The initiation of insolvency proceedings can also result in the termination of a partnership. An original partnership may also be terminated by restructuring, for example through mergers, corporate transformations, or spin-offs.

A corporation can also be liquidated by selling its assets and distributing the proceeds to the shareholders. This kind of dissolution occurs, for example, if it is required after a certain period of time in the articles of association, or if the shareholders adopt a resolution to this effect. But dissolution can also occur if a court declines to initiate insolvency proceedings against the company's assets because those assets are not sufficient to cover the cost of the proceedings. A corporation can also be terminated by transformation – for example, if it is merged into another corporation, or if its assets are divided up among other entities.

## **INSOLVENCY PROCEEDINGS**

Insolvency proceedings may be initiated against the assets of both a natural person (sole proprietorship) or a legal entity (such as a GmbH or AG), as well as against the assets of an OHG, KG or GbR. Grounds for insolvency include inability to meet payments when due (Zahlungsunfähigkeit), impending inability to meet payments when due, and liabilities in excess of assets (Überschuldung), depending on the legal form and on who initiates the insolvency proceedings. If insolvency proceedings are initiated, the administrator will examine options for continuing the entity with investors or liquidating its assets. The decision on these options is made by the creditors' assembly (Gläubigerversammlung), meaning the entire group of the insolvent entity's creditors. If the creditors' assembly decides to liquidate the debtor's assets, the administrator must carry out the liquidation.

If there is only a threat of insolvency or overindebtedness, the protective shield proceedings offer the entrepreneur the opportunity to draw up a reorganization plan under the protection of special proceedings in self-administration.

Additionally since 2021, companies threatened with insolvency have a new option under the "Stabilization and Restructuring Framework" (StaRUG proceedings) to avert insolvency. The StaRUG proceedings give entrepreneurs the opportunity to reorganize their business out of court without having to go through insolvency proceedings.

# CHAPTER 6

## FINANCIAL REPORTING AND AUDIT REQUIREMENTS

### REPORTING AND AUDIT REQUIREMENTS

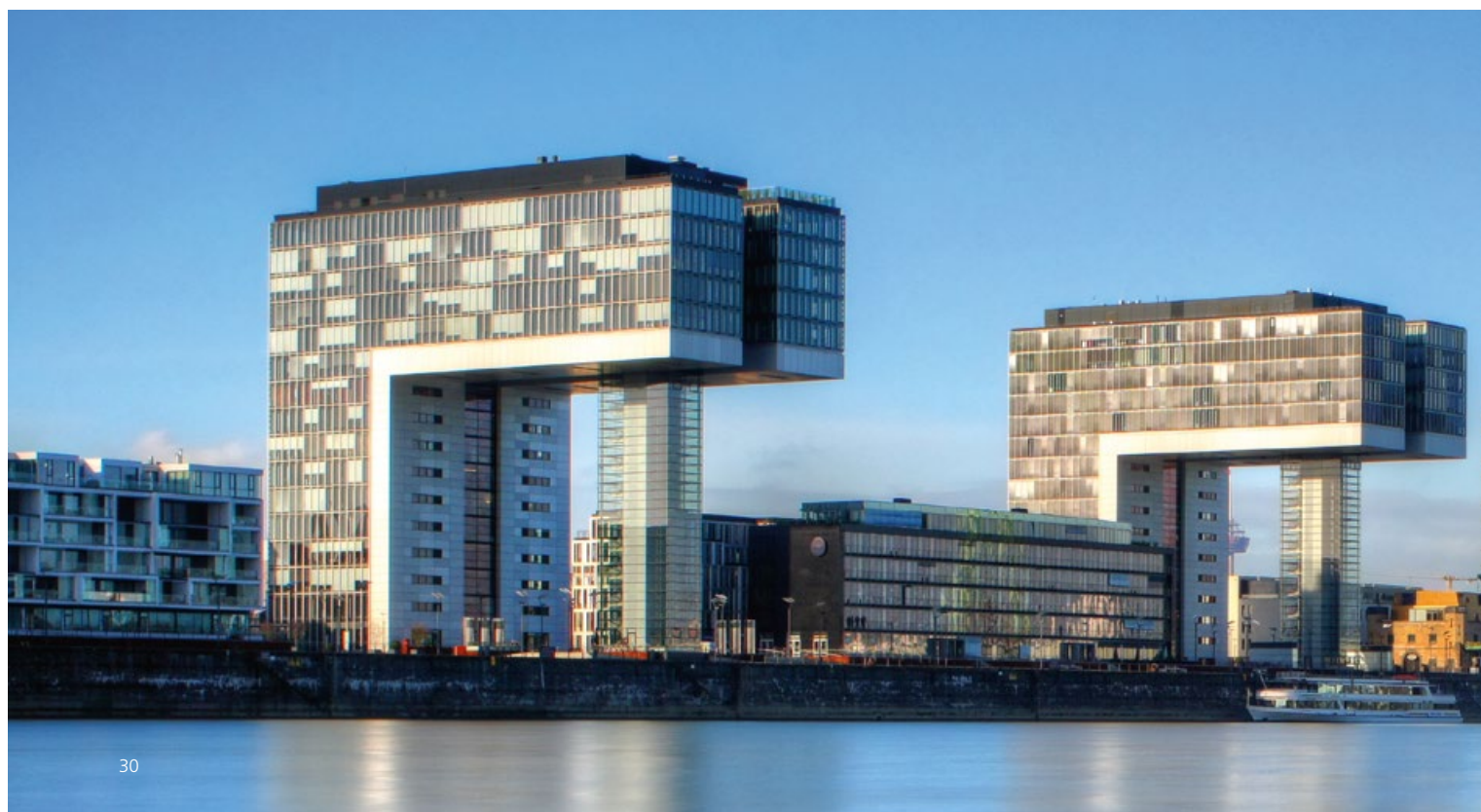
Under the Commercial Code, every merchant (see Sole Proprietorship in Chapter 4), every commercial partnership (OHG, KG, see Partnership in Chapter 4) and every corporation is required to maintain accounting records and prepare annual financial statements.

If there is no accounting obligation pursuant to the Commercial Code, for example because the entity does no commercial business or in the case of a GbR (see Partnership in Chapter 3), there may still be accounting requirements in order to comply with tax regulations. The criteria are whether revenues

during the calendar year exceed EUR 600,000 or profits for the financial year exceed EUR 60,000.

Independent professionals who operate either as sole proprietors or in a professional partnership with other professionals (Sozietät) are not required to maintain accounting records. They calculate their annual profit through what is known as the net income approach, in which revenues for a calendar year are netted off against expenditures.

Corporations, as well as partnerships organised with share capital (such as a GmbH & Co. KG, see Partnership in Chapter 4), are subject to expanded obligations to prepare annual financial statements.



The statements must be supplemented with notes that contain explanations of the items that appear in the balance sheet and income statement, as well as other information, for example about the company's contingent liabilities. The annual financial statements must also be accompanied by a management report (Lagebericht), containing management's assessment of the company's future business performance. Further information has to be reported by specific companies. For example, companies with more than 500 employees must prepare a report on equality and equal pay. Large listed corporations are obliged to include a non-financial report to their management report which contains information on environmental and human rights concerns (in accordance with the CSR directive).

The annual financial statements and management report must normally be published via electronic submission to the Federal Gazette, the Bundesanzeiger ([www.bundesanzeiger.de](http://www.bundesanzeiger.de)).

Depending on the size of the company, relief from the requirements of preparing the annual financial statements and reporting is available. A distinction is made among

- › very small corporations
- › small corporations
- › medium-sized corporations
- › large corporations.



THRESHOLD FOR ANNUAL FINANCIAL STATEMENTS	TOTAL ASSETS	REVENUES	AVERAGE NUMBER OF EMPLOYEES
Very small corporation	Up to EUR 350,000	Up to EUR 700,000	Up to 10
Small corporation	Up to EUR 6 million	Up to EUR 12 million	Up to 50
Medium-sized corporation	Up to EUR 20 million	Up to EUR 40 million	Up to 250
Large corporation	Over EUR 20 million	Over EUR 40 million	Over 250

Very small, small and medium-sized corporations are those that do not exceed at least two of the three thresholds above in two successive years. A large corporation has at least two of the three size characteristics above.

Besides preparing annual financial statements under the national accounting practices of the German Commercial Code (HGB), a company can also prepare financial statements under IFRSs. But preparing IFRS financial statements does not relieve the company of the obligation to prepare annual financial statements under the Commercial Code.

In addition to annual financial statements for a single entity, consolidated financial statements in combination with a group management report must be prepared if a corporation (parent company) domiciled in Germany can exercise control over at least one other entity. This is the case, for example, if it holds a majority of the voting rights in the other

entity. However, the parent company is exempt from preparing consolidated financial statements and a group management report if either the sum of its single-entity annual financial statements (gross method) or its consolidated financial statements (net method) meet at least two of the three criteria (see page 31) at the current and the last reporting-date. If a capital market oriented company is part of the consolidated group, the exemption provisions do not apply.

The consolidated financial statements and group management report must be made public.

An exemption from the requirement to file consolidated financial statements also exists if the group's parent company is itself a subsidiary of a parent company domiciled in another EU or EEA Member State, and that parent company files consolidated financial statements in the EU or EEA.



THRESHOLD FOR CONSOLIDATED FINANCIAL STATEMENTS	TOTAL ASSETS	REVENUES	AVERAGE NUMBER OF EMPLOYEES
Gross method	Not more than EUR 24 million	Not more than EUR 48 million	Not more than 250 in parent and subsidiaries
Net method	Not more than EUR 20 million	Not more than EUR 40 million	Not more than 250 in parent and subsidiaries

Publicly traded companies must prepare their consolidated financial statements under IFRSs which exempts them from the obligation to prepare consolidated financial statements under the German Commercial Code. Entities that are not publicly traded may prepare their consolidated financial statements under IFRS but are not required to do so.

Single-entity and consolidated financial statements must be prepared in accordance with generally accepted accounting principles (GAAP), some of which are regulated by law and some not. These include the following basic principles:

- › reporting-date principle
- › principle of personal attribution, taking account of beneficial ownership
- › principle of clarity and comprehensibility
- › principle of reporting in domestic currency and in German

› principle of accuracy, materiality and completeness.

These principles give rise to further principles, such as the prohibition of offsetting or netting off, the principle of formal and substantive continuity of reporting, and the principle of item-by-item valuation.

The annual financial statements and management report of corporations that exceed the size criteria for small corporations must be audited by an independent auditor. An independent auditor must also audit consolidated financial statements and group management reports. The results of the audit must be summarised in an audit opinion on the single-entity or consolidated financial statements.

## REPORTING AND AUDIT DEADLINES

Sole proprietorships and partnerships that must maintain accounting records and prepare annual financial statements are normally required to produce them within a time consistent with the ordinary course of business. This may well be a period of at least six months after the end of the financial year.

Corporations and partnerships with stock capitalisation must prepare their annual financial statements within the first three months after the end of its financial year. The period may be extended to six months for small corporations. There are also certain rules under special legislation, for example for credit institutions and insurance companies. The prepared annual financial statements must

then be adopted by the appropriate bodies, for example by the general meeting of a GmbH or by the Managing Board and Supervisory Board or the general meeting of an AG. Here again, the deadlines set by the applicable laws must be met. For example, the general meeting of an AG must resolve on the allocation of profits within eight months after the end of the financial year, and therefore – in cases where the annual financial statements are adopted by the Managing Board and Supervisory Board – that figure must be available in time for presentation to the shareholders at the meeting.

Single-entity and consolidated financial statements must normally be published in the Bundesanzeiger no later than one year after the reporting date for the financial year.

# CHAPTER 7

## COMPANY TAXATION

### COMPANY TAXATION

An entity's profits generated by a permanent establishment located in Germany are subject to either personal income tax or corporation tax, depending on the entity's legal form.

The business profits of sole proprietorships are subject to personal income tax. Partnerships are treated as transparent for tax purposes, so that the profits accruing to partners in a partnership, if they are natural persons, are subject to personal income tax. The tax rate is progressive, and ranges from 14 % to 45 %, depending on the amount of income and allowing for a standard exemption which is increased annually (since 2022 exceeding EUR 10,000).

Profits of corporations, and corporations' shares of profits from an investment in a partnership, are subject to corporation tax. The corporate tax rate is a flat 15 %. Since 2022 partnerships can opt to be treated as corporations for tax purposes and therefore being subject to corporation tax, whilst remaining a partnership under civil law.

An additional reunification surtax (Solidarit tszuschlag, or "solidarity surcharge") of 5.5 % of the tax amount is levied on both personal income tax and corporation tax. For income tax payers with low and average earnings the additional reunification surtax is abolished.

If the business is a commercial operation, it must also pay trade tax (Gewerbesteuer). The amount varies depending on where the commercial operation is located in Germany, because the rate is set by the regional government. As a rule, this tax rate is between 7 % and 18.35 % of profits. Sole proprietors and partners of a partnership can deduct trade tax up to a certain amount from their personal income tax, so that the tax burden is offset to that extent. There is no provision for trade tax to be deducted from corporation tax.

Entities may also have to deal with withholding tax, such as for investment income tax (Kapitalertragsteuer) or withholding tax for construction contractors (Bauabzugsteuer), which is withheld from income directly at the source and must be forwarded to the tax authorities by the party that owes the payments.

Finally, another very significant tax is value-added tax, which must be paid in at 19 % when taxable supplies are provided in Germany, or at the reduced rate of 7 % in specific cases. Businesses can deduct VAT for which they have been invoiced as input tax, if the input supplies were procured for use in output supplies that are subject to VAT.

## **RESIDENT COMPANIES**

Entities have an unrestricted tax liability in Germany if, in the case of a sole proprietorship, their domicile or usual place of abode is in Germany, or in the case of a company, they have their registered office or management here. In that case their entire income generated worldwide is normally subject to taxation in Germany.

In the case of cross-border operations, double taxation is avoided by the double taxation agreements that Germany has entered into with other countries, under which either only one country is granted the right of taxation, or else one country allows deductions for the other country's taxes. If there is no double taxation agreement with the other country, double taxation is regularly avoided by crediting the foreign tax limited to the German tax incurred on foreign income.

## **NON-RESIDENT COMPANIES**

If an entity has neither its registered office nor its management in Germany, and only generates income here, for example through a permanent establishment, it is subject only to a restricted tax liability in Germany. In that case only domestic income is taxable in Germany. Here again, the applicable double taxation agreements may offer ways to avoid double taxation.

## **TAX RETURNS AND ASSESSMENT**

The annual tax returns for personal income tax, corporation tax and trade tax must normally be submitted to the Tax Office by 31 July of the following year. If a taxpayer is represented by a tax advisor, the deadline is automatically extended to the last day of February of the second year following the taxation period. For the taxation periods 2020 to 2024, filing deadlines are extended with the intention to grant a certain relief in connection with the consequential effects of the COVID19 pandemic.

VAT returns for advance payments must be filed during the year. The timing depends on the amount of VAT that was payable for the previous year. These returns must generally be filed quarterly, but if the net VAT underpayment for the previous year was above EUR 7,500, VAT returns must be submitted monthly. If the net VAT payment for the previous year did not exceed EUR 1,000, there is no requirement to file returns for advance payments for the current year.

Payroll withholding tax returns covering income tax as well as church tax and solidarity surcharge (Solidaritätszuschlag) withheld from employees' wages and salaries must also be submitted to the Tax Office that has jurisdiction for the business establishment. The reporting period here is the calendar month. If taxes payable for the previous year were not more than EUR 5,000, the return can be submitted quarterly; if the previous year's taxes were not more than EUR 1,080, the return can be submitted annually.

If investment income tax is to be withheld from distributions of profits, an investment income tax return is required. It is due quarterly.

Tax returns must be submitted by the tenth day after the expiration of the filing period.

Payments for preliminary returns for which a taxpayer self-assesses must be made not later than three days after the payment was due. Payments on tax assessments based on tax returns are normally due one month after the tax assessment notice is received. Additionally, preliminary payments on personal income tax or corporation tax are due on 10 March, 10 June, 10 September and 10 December of each year, and preliminary payments on trade tax are due on 15 February, 15 May, 15 August and 15 November. The amount of preliminary payments is based on the tax assessed for the previous year. You can request a current tax deadline calendar from [novus@ebnerstolz.de](mailto:novus@ebnerstolz.de).

## **PROFITS SUBJECT TO TAX**

Tax is assessed on the basis of profits calculated under the principles of the Commercial Code. That figure may need to be amended in accordance with tax regulations, or may also proceed from the tax balance sheet derived from the commercial balance sheet. The individual tax acts also provide for revisions of the assessment base, for example in the form of non-deductible operating expenses or allowances. Tax-exempt income reduces the assessment base accordingly.

## **EMPLOYEE TAXES**

The employment income of employees working in Germany is subject to personal income tax. This tax is withheld by the employer from the pay check as a withholding tax, and is forwarded to the Tax Office responsible for the business establishment. After the end of the calendar year, as part of the personal income tax assessment the employee may obtain a review of the tax charge to take account of applicable tax deductions and any further income.

The tax rate for this withholding tax results from a progressive income tax rate schedule on the basis of the employee's expected employment remuneration for the year; after the base deduction, the rate comes to between 14 % and 45 % (see Company Taxation). The reunification surtax of 5.5 % of the withholding tax must be withheld in addition in case of higher earnings, as since 2021 the reunification surtax is abolished for income tax payers with low and average earnings. There is also a church tax if the employee belongs to a religious congregation that is entitled to collect that tax.

An employer must also withhold social security contributions from an employee's remuneration. The amounts are generally borne in equal shares by the employer and employee. In some cases, maximum assessment limits are provided for insurance contributions. There are also exemptions for certain employee groups.

## CALCULATING BUSINESS PROFITS

The business profit, the basis for income taxation (personal income tax, corporation tax and trade tax), must first be calculated from the annual financial statements. For tax purposes, modifications must be made here – for example in the measurement of pension provisions or the exclusion of bad-debt provisions – or it may be necessary to develop a set of annual financial statements for tax purposes from the commercial financial statements to determine the business profit for tax purposes.

Certain income included in the business profit may be tax-exempt, and should thus be deducted in calculating the tax base. For example, only 60 % of dividend income received by sole proprietors or natural persons as co-owners in a partnership is taxable (this is known as the “partial exclusion method”). If the recipient of the dividends is a corporation, or if a corporation receives dividend income from its position as a partner in a partnership, 95 % of that income is tax-exempt. A prerequisite for the corporation tax exempt is a minimum share of at least 10 % of the distributing corporation.

Operating expenses that reduce business profits must normally also be recognised for tax purposes. However, there are some restrictions, including the following:

› Expenses for gifts to business friends are deductible only if their cost does not exceed EUR 35 for the financial year.

- › Only 70 % of recognised reasonable entertainment expenses for business partners are deductible.
- › All fines, including administrative fines and warning fines, imposed by courts or other authorities are not normally deductible.
- › Trade tax payments are not deductible as business expenses.

Moreover, profits must be adjusted for trade tax purposes. Add-backs (Hinzurechnungen) must be made for such items as financing components (see below), or dividends where the taxpayer holds an ownership interest of less than 15 %. Deductions can be applied for items such as business profits that are not derived from establishments located in Germany.

## INTEREST DEDUCTION

Interest expenses generally reduce business profits for the business year to which they are economically attributable. However, deductibility of interest expenses may be limited by the “interest deduction cap” (Zinsschranke). If interest expenses after deduction of interest income total more than 30 % of EBITDA for tax purposes (earnings before interest, taxes, depreciation and amortisation), the amount above that percentage is not deductible for the business year. It may conceivably be deductible in subsequent years, subject to the interest deduction cap. However, the interest deduction cap does not apply if the interest expenses exceed interest income by less than EUR 3 million, if the business does not belong to a corporate group, or if the individual entity’s equity ratio is equal to or greater than the corporate group’s equity ratio.



If interest expenses are deductible after application of the interest deduction cap, 25 % of the expense must be added back to the assessment base for trade tax. For this purpose, in addition to interest expenses, account must be taken of financing components that are included in, for example, rental and lease expenses. They are credited if the interest expenses and financing components exceed EUR 200,000 during the tax period.

## **CAPITAL ASSETS**

The historical costs of capital assets reduce business profits through deductions for wear, tear and aging (depreciation and amortisation) and thus also reduce the tax base.

Straight-line depreciation and amortisation is permitted, taken over the usual useful life of the asset for tax purposes. The tax administration has released depreciation and amortisation deduction tables as an indicator for determining useful life. For movable assets bought or built before 31 December 2022 a degressive depreciation rate can be applied. The degressive depreciation rate is two and a half times the amount of the straight-line depreciation rate with a maximum rate of 25 %.

Business buildings can normally be depreciated at 3 % per year over a useful life of 33 years. Land, on the other hand, cannot be depreciated. Intangible assets can be amortised only if they are acquired for consideration. Purchased goodwill must be amortised over a useful life of 15 years for tax purposes.

## **DOUBLE TAXATION RELIEF**

If a natural person (sole proprietor or joint entrepreneur in a partnership) or a legal entity (corporation, either directly or as joint entrepreneur in a partnership) is subject to tax on business profits in more than one country, there is a risk of double taxation. This may happen, for example, if the taxpayer has an unrestricted tax liability – meaning all of its income worldwide is taxable – in one country because the individual's residence or usual place of abode is there, or because the company has its headquarters or principal place of business there, yet another country can assert a restricted tax liability for the earnings generated by a permanent establishment in that other country.

If Germany has a double taxation agreement with the other country, that treaty will usually provide for relief from double taxation because one country either exempts income taxed in the other country, or gives a credit towards its own tax for the tax collected in the other country. If a natural person has an unrestricted tax liability in Germany, income earned in another country may still affect the income tax rate even though it is exempt from taxation (known as exemption with progression, Progressionsvorbehalt).

If there is no double taxation agreement, or if the agreement does not eliminate double taxation, then to avoid double taxation German tax law allows a taxpayer with an unrestricted tax liability in Germany to credit foreign tax towards German tax. The credit is limited to the German tax incurred on foreign income. Alternatively, the foreign tax can also be deducted from the assessment base for German taxes.

## **WITHHOLDING TAX ON INVESTMENTS**

If a corporation in Germany pays dividends to its shareholders, it must withhold investment income tax of 25 % of the dividend. Investment income tax must be withheld and forwarded to the tax authorities irrespective of whether the shareholder is a German person or a foreign person, and what legal form the shareholder takes. If the Parent-Subsidiary Directive applies in favour of a dividend-recipient parent company domiciled in another EU country (minimum equity interest 10 %), one can apply for an exemption certificate (Freistellungsbescheinigung). If the distributing company is presented with this exemption certificate before the dividend is distributed, it can forgo withholding. If the applicable double taxation agreement lowers the withholding tax rate, or even reduces it to zero, one can likewise apply for an exemption certificate for this and present it. Otherwise, the dividend recipient must seek a refund of the withholding tax in a refund procedure.

Investment income tax of 25 % is also withheld from such sources as interest income. Withheld tax applies towards the German tax liability for both German and foreign recipients of interest income.

If a person with only a limited tax liability in Germany receives income from royalty payments, that income is subject to withholding tax at 15 %. Under the Interest-Royalty Directive, a taxpayer may be exempt from withholding tax on both interest and royalties if the recipient entity holds at least a 25 % ownership of the payer entity, and further requirements are met. In order to forgo withholding, the payer entity must have received an exemption certificate. Otherwise the recipient of the payment must rely on the tax refund procedure.

## **CAPITAL GAINS TAX**

If the business of a sole proprietorship or partnership is sold, or the individual business assets are liquidated and the business is thus discontinued, the profit thus realised is normally subject to personal income tax or corporation tax, as the case may be. If stakes in a company are sold in this context, for natural persons 60 % of the resulting capital gains are subject to taxation, and for corporations (as co-entrepreneurs of the partnership) only 5 % of such capital gains are to be taxed.

Natural persons may claim certain tax relief on profits from the sale of a business if certain requirements are met, for example if they pass above an age limit. A capital gain is free from trade tax if it is payable to a natural person. But if capital gains are attributable to corporations, they are subject to trade tax.

If a directly held stake in a corporation is sold, 60 % of the capital gain realised by the sale of the stake is subject to personal income tax if the shareholder is a natural person who has held a stake of at least 1 % at any time during the preceding five years. If the shares are held by a corporation, 95 % of the capital gain are exempt from corporation tax. This applies irrespective of the amount of the stake held. There is an equivalent exemption from trade tax.

## **USE OF TAX LOSSES**

Losses from a business activity can normally be offset against profits from another business activity within the same tax period. Losses that are not offset may be carried back to the prior year(s) for pur-

poses of personal income tax or corporation tax. The amount that usually can be carried back is in general limited to EUR 1 million (or EUR 2 million for natural persons who are assessed for personal income tax jointly as a married couple). For the years 2020 to 2023, this amount has been increased to EUR 10 million (or EUR 20 million für married couples). Since 2022, the loss carryback has been permanently extended from one to two years. Any further uncompensated loss can be carried forward to subsequent years and offset there without limitations up to EUR 1 million, but only for up to 60 % of any profit in excess of EUR 1 million.

For trade tax purposes, a loss not offset in the year when it arose can be carried forward to subsequent years and offset there without limitations up

to EUR 1 million, but only for up to 60 % of any profit in excess of EUR 1 million.

There are also special limitations on offsetting losses. One such limitation must particularly be borne in mind for corporations. If more than 50 % of the shares are transferred within 5 years in general, unused losses can no longer be deducted at all.

### **GENERAL ANTI-AVOIDANCE PROVISION**

In addition to a large number of abuse prevention provisions in the individual tax acts, such as the "controlled foreign companies" rule, German tax law includes a catch-all clause in Section 42 of the Tax Code, which provides that if the options affor-



ded by the law are abused, the tax liability reverts to what it would be with a structure appropriate to the economic transactions. Thus abusive structures are not recognised for tax purposes. For that the deciding factor is whether a structure was set up purely for tax reasons. If non-tax reasons, such as economic reasons, can be adduced for a structure in addition to tax reasons, the structuring will also be recognised for tax purposes.

## TRANSFER PRICES

In business relationships between a taxpayer domiciled in Germany and a related party in another country, for tax purposes the underlying terms of the relationship, especially prices (transfer prices), must be the same as would have been agreed between independent third parties under the same or comparable conditions (the arm's length principle). In particular, a related party is presumed to exist e. g. if a direct or indirect ownership interest of at least 25 % is held or a dominant influence can be exercised between the parties involved.

If the agreed prices do not conform to arm's length terms, they will be corrected for tax purposes. For example, if a taxpayer domiciled in Germany agrees on prices with a foreign subsidiary that are below recognisable transfer prices, the country where the subsidiary is domiciled will assume the subsidiary has higher earnings, and thus also a higher profit. Often an equivalent correction of the parent company's business expenses in Germany leads to problems, for example if the tax assessment can no longer be amended. If excessively high prices are paid to the subsidiary, the German tax authorities will not recognise the excessive portion of the price as a business expense, and will treat it as concealed contributions instead. It would still have to be

clarified whether the subsidiary's profits can be corrected in the other country. If this is not possible, there will be double taxation.

The arm's length price shall generally be determined by using the most appropriate transfer pricing method with regard to the comparability analysis and the availability of values on comparable transactions of independent third parties.

The calculation of transfer prices must be shown in transfer price documentation. Besides country-specific documentation of specific business transactions of the taxpayer with affiliated businesses (local file) an enterprise being part of a multinational group and with revenues exceeding EUR 100 million has to file as well a so-called master file. This file provides an overview of the enterprise's business activity and its transfer pricing methodology. The transfer price documentation which must be submitted to the German tax authorities on demand within 60 days. For extraordinary business transactions for which records must be prepared promptly, the submission deadline is shortened to 30 days. From 2025 onwards the shortened submission deadline of 30 days will apply in general. Violations of documentation obligations carry penalties. A surtax of as much as EUR 1 million per year can be imposed. Smaller enterprises are exempt from documentation obligations.

Additionally to the transfer price documentation multinational groups have to file a country-by-country report when they have a consolidated group revenue of at least EUR 750 million. The report must be transmitted to the German Federal Central Tax Office if the parent of the group is based in Germany or the German group member transmits the report for the foreign parent.

## **ADDITIONAL REPORTING REQUIREMENTS**

Since 2023, operators of digital platforms have to disclose information about transactions of their registered sellers to the European tax authorities under certain conditions (DAC 7). In case of a digital platform operating in Germany, information has to be transmitted to the Federal Central Tax Office (Bundeszentralamt für Steuern).

There is also a reporting requirement for certain cross-border tax arrangements with impact to at least one EU member state (DAC 6). These must be reported to the tax authorities of the EU member states in which the arrangements are designed, used or administered. In Germany the competent authority is the Federal Central Tax Office (Bundeszentralamt für Steuern) which automatically exchanges the gathered information with the tax authorities of the other EU member states.

## **PLANNING POINTS FOR FOREIGN INVESTORS**

In addition to economic considerations, foreign investors should give early consideration to aspects of taxes and company law. For example, early on, they should examine what legal form is most suitable for their investment (see Chapter 4). It might also be possible to do business in Germany through a permanent establishment rather than an independent subsidiary. A permanent establishment is created simply by becoming active in Germany, including with the necessary associated decision-making powers. However, categorisations differ under German law, under the laws of other countries, and under the definitions in the double taxation agreements. These may lead to disparities in the allocation of taxation rights and thus may

result in double taxation effects. For example, under German law a permanent establishment is created if a foreign company conducts installation operations here for a period of more than six months. Accordingly, Germany would tax the profits attributable to the establishment. By contrast, many double taxation agreements provide that a permanent establishment is not founded until a business has been conducting installation for at least 12 months, so that it may be that the country where the company is domiciled would also assert the right to tax the profit resulting from the installation work in Germany. It should also be noted that under the Authorised OECD Approach (AOA), the establishment is to be treated as an independent entity, so that fictitious business relationships between the parent company and the establishment must be taken into account, thus possibly leading to associated profits. For that reason, to avoid the uncertainties involved in a permanent establishment, it may be advisable to found a subsidiary in Germany right from the outset.

In addition to the choice of legal form, tax effects can also be achieved by establishing an “Organschaft”, a tax-consolidating parent-subsidiary relationship, for income tax purposes. It is true that corporations, as independent taxpayers, are always subject to taxation on their profits. But by forming an “Organschaft”, they can offset losses between companies. For example, the losses of a domestic subsidiary can be offset with the profits of the domestic parent, thus reducing the tax payments within the corporate group. However, “Organschaft” relationships are normally possible only with companies which have their place of effective management in Germany.



# CHAPTER 8

## PERSONAL TAXATION

### RESIDENTS AND NON-RESIDENTS

Natural persons residing in Germany are subject to an unrestricted income tax liability. Thus all their income, all over the world, must normally be taxed in Germany. Persons whose usual place of abode is in Germany are likewise subject to an unrestricted tax liability. This should regularly be presumed if the person resides in Germany for a continuous period of more than six months. Nationality, by contrast, is of no consequence for the matter of unrestricted tax liability.

Natural persons with no residence or usual place of abode in Germany are subject to German income tax only on the income they generate in Germany. They are therefore subject to a restricted income tax liability. But if their domestic income in a calendar year comes to at least 90 % of income generated worldwide, or if their foreign income does not exceed the standard exemption (see Personal

income tax rates), taxpayers can apply to be treated as having an unrestricted tax liability. This enables them to take advantage of numerous deduction options, for example for social security contributions or medical expenses, that are not allowable for a restricted income tax liability (see Deductions).

### INCOME TAX

The following types of income are subject to personal income tax for those who have an unrestricted tax liability:

- › Income from agriculture and forestry
- › Income from a commercial operation
- › Income from independent work
- › Income from non-independent work
- › Income from capital assets
- › Income from rentals and leases
- › Other income.





What items belong to other income is exhaustively established by law. Among them is income from the public pension scheme or a comparable pension scheme; here the taxable percentage is based on the date when the pension is first drawn. For example, if the pension is first drawn in 2023, 83 % of the payments are taxable. This category also includes income from private sale transactions (see Capital Gains Tax).

Tax exemptions should be noted within the types of income. For example, 40 % of dividends earned as part of a commercial operation are tax exempt. Employees can obtain tax-exempt refunds for job-related travel expenses, within the limits set by law. Also, an employer can reimburse an employee's childcare costs tax-exempt, if the exemption requirements are met. There are also provisions under which an employer's contributions to establish a company pension scheme are tax-exempt up to a certain amount.

If a natural person is subject only to a restricted income tax liability because of no residence or usual place of abode in Germany, the income from the above sources is taxable if there is a domestic connection of the income. For example, for income from a commercial operation, an establishment maintained in Germany is necessary, through which the profits are generated. Income from the non-independent work of a taxpayer with a restricted tax liability is to be treated as domestic income if the activity is conducted or marketed in Germany. Income from rentals and leases comes under income tax if it results from a property located in Germany.

## CAPITAL GAINS TAX

Capital gains are not subject to any special taxation, but are subject to income tax consistently with their type of income.

Capital gains categorised as income from agriculture and forestry, commercial operations, or independent work are normally fully taxable within the limits for this form of income. If the seller has reached age 55 or is permanently unable to work, a reduced tax rate applies to the capital gain, equal to 56 % of the individual average tax rate.

Gains on the sale of privately held assets are taxable as other income, although land transactions are included only if not more than ten years have passed between acquisition and sale. For other assets, sale transactions only within a sale period of one year are covered.

Private sales of securities, on the other hand, are treated as income from investment assets, and are subject to income tax irrespective of any sale period. Income tax on capital gains from securities is generally levied at a flat-rate withholding tax (Abgeltungssteuer) of 25 % (plus solidarity surcharge).

## DEDUCTIONS

For those with an unrestricted income tax liability, total taxable income can be reduced by a variety of deductions, including the following:

- › Special expenses, such as:
  - › Contributions to public social insurance schemes
  - › Disability insurance premiums
  - › Church tax
  - › Donations for up to 20 % of total income or 4 ‰ of total revenues and wages
- › Unusual expenses, such as:
  - › Medical expenses
  - › Maintenance payments for persons entitled to support by law, up to an annual maximum
  - › A lump sum disability deduction depending on the degree of disability
- › Allowances or tax exemptions for children under age 18, or 18 and above for children taking vocational training.

## PERSONAL INCOME TAX RATES

The taxable income of a taxpayer with an unrestricted tax liability, determined by adding up earnings and taking the possible deductions, is subject to the progressive income tax rate, which begins at 14 % once the base exemption is exceeded (in 2023, EUR 10,908) and rises to 45 %. The range of rates for 2023 can be broken down as follows (and is subject of annual adoptions):

INCOME	MARGINAL TAX LIABILITY	AVERAGE TAX LIABILITY
Up to EUR 10,908	0 %	0 %
EUR 10,909 to EUR 15,999	14 % to 24 %	0 % to 7 %
EUR 16,000 to EUR 62,809	24 % to 42 %	7 % to 26 %
EUR 62,810 to EUR 277,825	42 %	26 % to 38.7 %
EUR 277,826 and above	45 %	38.8 % to less than 45 %

However, income from capital investments is generally excepted from the progressive income tax rate. Instead it is subject to a flat-rate withholding tax (Abgeltungssteuer) of 25 %. However, exceptions from the flat-rate withholding tax are provided, and taxpayers can apply to have the individual income tax rate applied if that is more advantageous for them.

A reunification surtax of 5.5 % must also be paid on income tax. For income tax payers with low and average earnings the reunification surtax is abolished.

Spouses who both have an unrestricted tax liability and who are not separated can be assessed jointly for income tax. For that purpose the income of both spouses is pooled, deductions are taken in total, and the resulting taxable income is subject to income tax under the "splitting" method. If the two spouses have different income levels, they benefit

from a lower individual income tax rate, because the tax rate is determined on the assumption of equal incomes, so that the progressive rate levels yield a lower individual tax rate than the higher-earning spouse would have to pay if assessed individually.

For taxpayers with a restricted liability, the progressive tax rate would also apply, but with no allowance for the standard deduction. If income tax was already withheld as withholding tax, e.g., from wages, investment income or royalties, income tax is generally considered to be covered by that withholding. But a taxpayer who has a restricted liability and domestic income from non-independent employment can (under certain conditions) apply to be assessed for personal income tax, and thus for a review of the withheld tax.

## **DOUBLE TAXATION**

A person subject to an unrestricted tax liability in Germany is subject to taxation on all income generated worldwide. Consequently there may be a risk that income generated in other countries may be doubly taxed if the other countries also assert a right to tax the income generated there. A person with a restricted tax liability in Germany may also be subject to both German taxation and taxation in the country of residence on income generated in Germany, if the other country also asserts a right to tax that income.

The risk of double taxation is regularly averted by double taxation agreements between countries. If double taxation for a person subject to an unrestricted tax liability in Germany is not averted by a double taxation agreement, German rules regularly allow the foreign tax to be credited towards German taxes.

## **ASSESSMENT**

Persons with an unrestricted or restricted tax liability whose income tax has not already been fully covered by taxes withheld must submit an annual income tax return to the Tax Office that is responsible for them. The tax return deadline is normally 31 July of the subsequent year. If a person is represented by a tax advisor the return deadline is automatically extended to the last day of February of the second year following the taxation period. For the taxation periods 2020 to 2024, taxpayers are granted longer filing deadlines which are intended to be a relief in connection with the consequential effects of the COVID19 pandemic.

A tax return must be submitted on the official forms. Meanwhile, the electronic submission of tax returns is the standard practice. Electronic filing is mandatory for taxpayers with profit income (income from agriculture and forestry, commercial operations or independent activity).

# CHAPTER 9

## INDIRECT TAXES

### VALUE-ADDED TAX

The most important indirect tax in Germany is value-added tax (VAT). In this form of taxation, a business owner who provides a taxable good or service (a “supply”) pays the tax, and remits it to the Tax Office. But ultimately, value-added tax is economically borne by the consumer, whose payment to the business for the received good or service includes the value-added tax.

All goods and services provided in Germany by a business owner, as part of the business, in return for consideration, are subject to VAT unless those goods and services are tax-exempt. A good is delivered when the recipient receives the power of disposal over an object. A service is any performance that is not a good. The distinction between good and service is significant for determining the place of performance. For delivery of a good, the place of performance is generally the place where forwarding or shipment to the buyer begins. For a good which is not transported or dispatched the place of performance is where the object is located at the time of obtaining the power of disposition. For a service provided to a business

owner, normally the place of destination applies, so that the place of performance is where the recipient is domiciled or conducts its business.

For a service conducted to a consumer, the place of performance is where the service provider conducts its business. If no remuneration is agreed for a supply, it is nevertheless considered equivalent to a supply provided for consideration in many cases, for example if a business owner uses the supply for purposes outside the enterprise.

If the appropriate requirements are met, goods are exempt from value-added tax if they are delivered to another EU Member State (intra-Community deliveries of goods), as are goods delivered to a non-EU country (export deliveries). Also exempt are such activities as medical treatments and the granting and brokering of loans. Land rentals are also exempt from value-added tax, although in some cases one may opt to be subject to VAT.

Value-added tax is normally based on the agreed remuneration. If total revenues for the previous calendar year did not exceed EUR 600,000, value-added tax can be calculated from the remuneration actually collected.



The VAT rate is 19 %. For certain supplies, a reduced rate of 7 % applies, for example deliveries of foods or printed products, and hotel accommodations. For a limited period of time (1 October 2022 until 31 March 2024) the VAT rate for gas supplies has been reduced from 19 % to 7 %.

Businesses may deduct from the VAT that they must remit to the tax authorities the VAT that they have been billed and that they must pay for goods and services procured from other entities. This is considered an input tax. If goods are procured from businesses in non-EU countries, an import VAT must be paid for them, which is likewise deducted from the payable VAT.

The VAT for the return period must be declared to the Tax Office in charge no later than the 10<sup>th</sup> day after expiration of that period, via electronically submitted VAT returns. The return period is normally the quarter, but if the VAT to be remitted for the prior calendar year was over EUR 7,500, as well as for newly founded entities, the period is the calendar month. If the VAT to be forwarded for the prior year was not more than EUR 1,000, there is no requirement to file advance VAT returns for the current year. Tax is payable by the 10<sup>th</sup> day after the end of the return period, with a three-day grace period. After the end of the calendar year, a VAT return must regularly be filed by 31 July of the next year (longer filing periods apply for the years 2020 to 2024).

Bonn





## ACCOUNTING FOR INDIRECT TAXES

Businesses are generally required to maintain accounting records anyway under the Commercial Code, but there are also accounting obligations under the tax regulations (see Chapter 6). However, there are no separate accounting obligations for indirect taxes, particularly value-added tax. Instead, they are part of the general accounting obligations. However, in order for a business to be entitled to deduct input tax, there must be a proper invoice for the supply subject to VAT that another business provided. For that reason, these invoices should be kept available for auditing as part of the accounting procedures. The business must also issue invoices for supplies provided, which should also indicate, in addition to the deliverable and the recipient, such matters as a serial invoice number, a sufficiently specific description of the supply, the remuneration, and the tax amount.

Here it should be noted that a parent-subsidiary relationship (Organschaft) for VAT purposes may exist between affiliated entities if they meet the requirements of law. Supplies provided within the “Organschaft” are to be treated as internal turnover and therefore do not trigger VAT. Accordingly, invoices for supplies provided within an “Organschaft” also do not need to show VAT.

If VAT is shown on the invoice even though the revenue is not subject to VAT, the improperly shown amount of tax should be remitted to the Tax Office.

## OTHER TAXES

### Customs duties

Goods imported into Germany from countries outside the EU are subject to customs duties. As a rule, there is also an import VAT (see Value-added tax). For this purpose, imported goods must clear customs. The amount of the duty depends on what product number (TARIC Code) a product is categorised under, and what customs value is assigned to the goods as an assessment basis for the customs duty rate. Information on how to calculate import duties can be obtained at no charge on the Internet from the EZT-Online and TARIC query systems (see [www.zoll.de](http://www.zoll.de)). Under certain conditions, a customs duty reduction or exemption can also be claimed for imported goods.

There is a variety of procedures for collecting customs duties. For example, if a good imported from a third country into an EU territory is to be freely disposed of, it must first be cleared for free commerce under the customs regulations. On the other hand, if the good imported from a non-EU country is to be used only transiently within EU territory – as in the case of construction machinery – the customs procedure for temporary use may be applied.



### **Excise duties**

The consumption or use of certain goods is subject to excise duties (consumption taxes). Although these are to be borne economically by the person who consumes the goods, for reasons of procedure economy excise duties are collected from the maker or dealer of the taxable goods. They in turn regularly pass on the tax charge to the consumer by way of the purchase price.

Excise taxes are currently charged in Germany on:

- › Energy products
- › Electricity
- › Spirits
- › Beer
- › Sparkling wine and intermediate products
- › Alcopops
- › Tobacco
- › Coffee.

If goods subject to excise duties are made, warehoused, processed, or refined in Germany, and if immediate payment of the excise duty is to be avoided, a tax warehouse must be set up. Under certain conditions, it is also possible to transport goods subject to excise duties within Germany under a tax deferral. Finally, the laws on excise duties also provide for various tax advantages, for example using goods subject to excise duties as samples.

### **PROPERTY TAX**

Owners of real estate are required to pay land tax. If property is rented out, the land tax is regularly passed on as a service charge to the tenant, who then must bear the land tax in economic terms. Nevertheless, in Germany non-EU tax per se is not perceived as an indirect tax, because the tax is to be paid by the person to whom ownership of the property is attributable.

Property tax is based on the assessed value of the property and by the applicable collection rate set by the collecting municipality in whose territory the property lies. The value of the property is determined in an assessment. As a result of a major reform in 2019 a new assessment was conducted as of 1 January 2022. The newly assessed values will be the basis for calculation of property tax from 1 January 2025 onwards. Nevertheless, until 31 December 2024 property tax will be charged under the previous regulation based on old assessed values.

### **REAL ESTATE TRANSFER TAX**

When a property is bought, the transaction is subject to real estate transfer tax. Here both the buyer and the seller are liable for the tax, although land purchase agreements regularly call for only the buyer to be responsible for the tax. However, ultimately the real estate transfer tax is not an indirect tax.

Real estate transfer tax is also triggered, for example, if a partnership or a corporation whose business assets include a piece of land transfers at least 90 % of shares of the partnership's/corporation's assets to new partners/shareholders within ten years (change of partners). If a corporation holds a piece of land, the real estate transfer tax is triggered if 90 % of the company's shares are combined in the hands of a buyer or a buyer group (consolidation of shares). In this way, real estate transfer tax may also be due when a corporate group is restructured.

The assessment basis for the real estate transfer tax is the consideration paid for the property, particularly the purchase price. In the case of a change of partners or a consolidation of shares, the value of the property is to be used, which regularly results from the rent obtainable over the presumed re-

maining useful life. Although the tax rate is a standardised 3.5 %, the federal states have been left free to define a different rate. Most states have now made use of that option. Real estate transfer tax rates as at 1 January 2023 are therefore:

REAL ESTATE TRANSFER TAX IN GERMANY			
Schleswig-Holstein	6.5 %	Saxony	5.5 %
North Rhine-Westphalia	6.5 %	Hamburg	5.5 %
Saarland	6.5 %	Baden-Württemberg	5 %
Brandenburg	6.5 %	Saxony-Anhalt	5 %
Thuringia	6.5 %	Rhineland-Palatinate	5 %
Berlin	6 %	Lower Saxony	5 %
Hesse	6 %	Bremen	5 %
Mecklenburg-Vorpommern	6 %	Bavaria	3.5 %

Transactions exempt from the real estate transfer tax include purchases of property between spouses or domestic partners in a registered domestic

partnership, as well as acquisitions of property that fall within the purview of the Inheritance Tax Act (Erbchaftsteuergesetz).

# CHAPTER 10

## LABOUR REGULATIONS, WELFARE AND SOCIAL SECURITY

### EMPLOYMENT AND LABOUR STANDARDS

Employment relationships are governed primarily by the employment agreement between the employer and the employee. The collective bargaining agreements for the particular establishment (Betriebsvereinbarung) must also be observed, as well as any terms of general collective bargaining agreements (Tarifvertrag) if the entity falls within the scope of such an agreement.

The requirements of labour law must also be complied with, often involving minimum standards that cannot be waived by individual contract to the employee's detriment. The minimum requirements of law include, among others:

#### Minimum wages

Effective 1 October 2022, the statutory minimum wage was set at EUR 12 gross per hour. That provision applies to all employees and also to some interns who are not employees. Trainees are exempted. Employees who were formerly categorised as long-term unemployed are exempted from the

minimum wage requirement for the first six months of their employment. In addition to the statutory minimum wage, there are also industry-dependent minimum wages, some of which provide for higher minimum wages (e.g. in the care sector).

#### Working hours

The work day allowed by law comes to eight hours; at six work days per week (Monday through Saturday) this comes to a permissible work week of 48 hours. The work day may also be extended to ten hours, and the work week to 60 hours, if the average daily work schedule does not exceed eight hours within a period of six months or 24 weeks.

The agreement between the employer and employee defines how work hours are to be distributed among the individual days of the week. A shorter work week can also be agreed here.

If the work day is between six and nine hours, a 30-minute break must be agreed. If the work day is more than nine hours, the break must be at least

45 minutes. Furthermore, a continuous rest period of at least eleven hours must generally be allowed after the end of the work day.

### **Minimum leave**

Employees are entitled by law to at least 24 working days of paid holiday per year. Based on a six-day week, this yields a minimum annual holiday of 4 weeks. To ensure that the holiday can fulfil its function of rest and recuperation, it must normally be granted and used during the same calendar year. For urgent business reasons or personal reasons of the employee, a deferral to the next year may be allowed, but then the holiday must be granted during the first three months. However, a further transfer may be agreed in an employment agreement.

### **Maternity protection and parental leave**

Expectant mothers are not allowed to work during the last six weeks before delivery, and normally during the first eight weeks afterward. During this period they are paid their average monthly pay from the past three months. The expense is disbursed by the employer but reimbursed by the employee's public or private health insurance.

If parents of a new born stay at home or reduce working hours, one of them or both can apply for a parental allowance for maximum 14 months jointly. Instead of wages they receive a compensation of generally 65 % of the lost net income paid by social funds.

Additionally, until the child reaches the age of three, parents are entitled to parental leave, i.e., to be released from work without pay. Alternatively,

at businesses that regularly have more than 15 employees, the father or mother may request to have work hours reduced, or to have them distributed differently.

### **Sick leave**

In the event of illness, the employee is to receive continuing pay over a period of six weeks. Here employers with not more than 30 employees will receive a percentage of the cost reimbursed under continued pay insurance.

If the same illness continues, the employee is entitled to sick pay from his or her public or private insurance fund. The employer does not have to continue paying wages during this period.

### **Termination of employment**

An employment agreement can be terminated with notice in a "regular" (ordentlich) termination complying with the notice periods set by law. In this case an employment relationship may be terminated on four weeks' notice, effective on the 15th day or at the end of the calendar month. If the employment relationship has been in force for two years, the notice period is one month effective at the end of the month. After five years of employment, the notice period is extended to two months, and extensions continue to increase as a function of the duration of employment, up to seven months after employment has lasted 20 years. The statutory notice for a contractually agreed probation period of not more than six months is two weeks.





These periods may be shortened only under a general collective bargaining agreement, or by reference to such an agreement. But longer notice periods may be agreed.

If a business has more than ten employees, normally the Act Protecting against Termination (Kündigungsschutzgesetz) applies. In this case an employee who has been employed for more than six months can ask a court to review the termination. In order to avoid being declared invalid, the termination must be for a cause provided by law, which must either be founded in the employee's person or con-

duct, or be justified by urgent business needs. Furthermore, if there is cause for termination, a socially correct selection must be made among employees in a comparable group, taking into account such factors as the duration for which they have been with the business and their family circumstances.

Within narrowly defined bounds, moreover, an employment relationship may be broken off by an "extraordinary" termination, if it is so severely disrupted that the parties cannot reasonably be expected to continue the contract.



### **Works council**

At domestic businesses with at least five permanent employees who have reached the age of 18, a works council (Betriebsrat) may be formed, the size of which depends on the number of employees. The council for a business with five to 20 employees eligible to vote consists of one person. For 21 to 50 employees, the council consists of three members. The number of members rises continuously as the size of the workforce increases. For a business with between 701 and 1000 employees, for example, the council has 13 members.

The works council's duties include ensuring compliance with laws and other legal requirements that benefit the employees. It also has numerous co-determination rights, for example concerning rules on distributing weekly work hours and on preventing occupational accidents and occupational diseases. The works council also has a right to be heard before any employee is terminated. If that right is violated, the termination is invalid.

### **Employee co-determination**

The Supervisory Board of any stock corporation (Aktiengesellschaft) with more than 2,000 employees in the standard case, must also include representatives of the employees. Those Supervisory Boards must be composed of equal numbers of employee representatives and other members, so that the employee representatives can at least block resolutions that require a  $\frac{3}{4}$  majority, and also have a considerable voice in management (co-determination). Additionally, in case of corporations with more than 500 employees  $\frac{1}{3}$  of the members of the Supervisory Boards must be employees.

### **Union representation**

Workers' ability to join unions is guaranteed by the constitution. Germany has numerous unions for various industries and professional groups. They represent the interests of their organised worker members, especially by entering into general collective bargaining agreements with the employers' associations. Union representatives also sit on those Supervisory Boards that are subject to a co-determination requirement. Finally, they also have great political importance as representatives of workers' interests.

The three largest unions in Germany are the metalworkers' union (IG Metall), with about 2.15 million members, the service workers' union (ver.di), with about 1.86 million members, and the mining, chemicals and energy workers' union (IG Bergbau, Chemie, Energie), with about 580,000 members (figures from 2022).

## **OTHER EMPLOYMENT INFORMATION**

### **Work permits**

Whether non-German employees must have a work permit to take up employment depends largely on their nationality.

There are no restrictions on employment for nationals of EU Member States, EEA states (Iceland, Norway and Liechtenstein) or Switzerland. They have freedom of movement under EU law or equivalent treaties.

Nationals from non-EU countries do need to have an appropriate approval for employment on their residence permit. If they have no such work permit, they cannot be employed either as direct employees or as contractors for remunerated work or services. Agreements with various countries or other provisions of law may allow exceptions. However, facilitated handling is available for some cases, including highly qualified individuals or persons working in research. Special rules also apply for holders of the EU Blue Card.

**Social security**

Employed workers are normally subject to a social security coverage obligation. Special rules cover temporary secondments to Germany; these assign-

ments must first be examined to determine whether the employee continues to be covered by the social insurance systems in the country where he or she formerly worked, or falls under a social security obligation in Germany.

Contributions to the public social insurance schemes are normally made in equal shares by the employer and employees, although this principle of equally shared financing is no longer consistently applicable, at least in health insurance.

The following forms of social insurance exist, for which contributions must be deducted from gross pay at the indicated percentages (2023 figures):

SOCIAL INSURANCE	EMPLOYER’S SHARE	EMPLOYEE’S SHARE
Health insurance	7.3 % plus half of an additional (averaging 0.8%)	7.3 % plus half of an additional premium (averaging 0.8%)
Long-term care insurance	1.525 %	1.525 % plus a 0.35 % surcharge for childless persons aged 23 or above
Pension insurance	9.3 %	9.3 %
Unemployment insurance	1.3 %	1.3 %

Assessment limits for contributions are provided. Contributions must be paid on wages or salaries up to these limits; the assessment does not increase for pay levels above the limit.

The assessment limits for 2023 for general pension insurance are EUR 7,300 per month in the western states, and EUR 7,100 in the eastern states (see Political System in Chapter 1). For the public health insurance scheme, the assessment limit is EUR 59,850 per year throughout the country, or EUR 4,987.50 per month.

## PENSION PLAN

### Public pension

Employee retirement is generally covered by public pension insurance. The retirement age was formerly 65, but was raised in stages. Currently, the retirement age is 67 for those born in 1964 or later. Earlier retirement is possible, although there may be reductions in retirement benefits. A special rule has been established for persons who have been covered by insurance for an especially long time. If a person has made mandatory payments into the public retirement insurance scheme for 45 years, the retirement age is lowered, so that the person can start collecting public retirement benefits earlier without deductions. However, if the person was born in 1964 or later, he or she must be at least 65 years old.

An employee is entitled to public retirement benefits if he or she can demonstrate coverage for at least five years. However, the duration of coverage and the amount of premiums paid does ultimately affect the amount of insurance benefits.

### Company pension schemes

In addition to the public pension insurance scheme, many employees take advantage of the opportunity to cover their old age with a company pension scheme, because according to projections, benefits from the public system are likely to continue decreasing.

Employers have a variety of options for offering a company pension scheme, which is often also used as a way of ensuring employee loyalty and as a competitive advantage to attract and keep qualified employees.

A company pension scheme can be offered

- › through direct insurance
- › through a low-risk pension fund (Pensionskasse)
- › through a higher-risk but potentially higher-return pension fund (Pensionsfonds)
- › through a support fund or
- › as a directly conferred benefit.

In some cases there is an option for arranging tax exemptions or tax advantages for premiums paid into the company pension fund, so that the employee is relieved from taxes during the period while the company pension coverage is being built up. The benefits after retirement are then taxable for the employee, but they generally are taxed at a lower rate because of the income situation during retirement.

# GLOSSARY

## A

accounting records  
Act Protecting against Termination  
additional reunification surtax  
annual financial statements  
annual tax returns  
arm's length principle  
articles of association

Buchführung  
Kündigungsschutzgesetz  
Solidaritätszuschlag, or "solidarity surcharge"  
Jahresabschluss  
Jahressteuererklärungen  
Fremdvergleichsgrundsatz  
Satzungsregelung

## B

bank account  
basic account  
Basic Law  
bearer shares

Bankkonto  
Basiskonto  
Grundgesetz  
Inhaberaktien

## C

capital assets  
capital gains  
capital gains tax  
central bank  
Chamber of Industry and Commerce  
collective bargaining agreements  
commercial bank  
Commercial Code  
commercial operation  
commercial partnership  
Commercial Register  
company pension scheme  
consolidated financial statements  
Constitutional Court  
controlled foreign companies rule  
cooperative  
Cooperatives Register

Anlagegüter  
Veräußerungsgewinne  
Steuer auf Veräußerungsgewinne  
Zentralbank (Deutsche Bundesbank)  
Industrie- und Handelskammer (IHK)  
Tarifverträge  
Geschäftsbank  
Handelsgesetzbuch  
Gewerbebetrieb  
Handelspersonengesellschaft  
Handelsregister  
betriebliche Altersvorsorge  
Konzernabschluss  
Bundesverfassungsgericht  
Hinzurechnungsbesteuerung  
Genossenschaft  
Genossenschaftsregister

## C

copyright  
corporate financing  
corporation  
corporation tax  
credit unions  
crowdfunding  
currency exchange control  
Customs Code  
customs duties  
customs office  
customs requirements

Urheberschutz  
Unternehmensfinanzierung  
Kapitalgesellschaft  
Körperschaftsteuer  
Genossenschaftsbanken  
Crowdfunding  
Wechselkurskontrolle  
Zollkodex  
Zollabgaben  
Zollamt  
zollrechtliche Vorgaben

## D

data protection rights  
deductions  
depreciation and amortisation  
design  
director  
division  
double taxation agreements  
due care of a prudent businessman  
duties of directors

Datenschutzrechte  
Abzüge  
Absetzungen für Abnutzungen  
Design  
Geschäftsführer  
Realteilung  
Doppelbesteuerungsabkommen  
Sorgfalt eines ordentlichen Geschäftsmannes  
Pflichten der Geschäftsführer

## E

employer number  
employers' liability insurance association  
employment agreement  
entrepreneurial company  
European banking union  
excise duties  
exemption certificate  
export duties  
export procedure  
extraordinary or special general meeting

Betriebsnummer  
Berufsgenossenschaft  
Arbeitsvertrag  
Unternehmergesellschaft (UG)  
Europäische Bankenunion  
Verbrauchssteuer  
Freistellungsbescheinigung  
Ausfuhrzölle  
Ausfuhrverfahren  
aussergewöhnliche Hauptversammlung

## F

Federal Assembly  
Federal Cartel Office  
Federal Data Protection Act  
Federal Financial Supervisory Authority  
Federal Gazette  
federal state  
Financial Account Information Act  
flat-rate withholding tax  
foreign trade law

Bundesversammlung  
Bundeskartellamt  
Bundesdatenschutzgesetz  
Bundesamt für Finanzdienstleistungsaufsicht (BaFin)  
Bundesanzeiger  
Bundesland  
Finanzkonten-Informationsgesetz  
Abgeltungssteuer  
Aussenwirtschaftsrecht

## G

general meeting  
general partner  
general partnership  
German Patent and Trade Mark Office

Gesellschafterversammlung  
Komplementär  
offene Handelsgesellschaft (OHG)  
Deutsches Patent- und Markenamt

## I

import duties  
inability to meet payments when due  
independent auditor  
Inheritance Tax Act  
intellectual property  
interest deduction cap  
investment financing  
investment income tax  
investment income tax return  
invoice

Einfuhrzölle  
Zahlungsunfähigkeit  
Abschlussprüfer (Unabhängiger Prüfer)  
Erbschaftsteuergesetz  
geistiges Eigentum  
Zinsschranke  
Investitionsfinanzierung  
Kapitalertragsteuer  
Kapitalertragsteueranmeldung  
Rechnung

## L

large corporations  
leasing or factoring agreements  
liabilities in excess of assets  
limitations on offsetting losses  
limited liability company  
limited partners

grosse Kapitalgesellschaften  
Leasing- oder Factoringvereinbarungen  
Überschuldung  
Verlustverrechnungsbeschränkungen  
Gesellschaft mit beschränkter Haftung (GmbH)  
Kommanditisten



## L

limited partnership  
limited-term residence permit  
local Labour Office  
local trade office  
lower house of parliament

Kommanditgesellschaft (KG)  
Aufenthaltserlaubnis  
Arbeitsagentur  
Gewerbeamt  
Bundestag

## M

management report  
Managing Board  
maternity protection  
medium-sized corporations  
merchant  
merger  
minimum annual holiday

Lagebericht  
Vorstand  
Mutterschutz  
mittelgroße Kapitalgesellschaften  
Kaufmann  
Zusammenschluss  
Mindestjahresurlaub

## N

no-par shares

Stückaktien

## O

Operating expenses  
optionally registrable merchant  
ordinary general meeting

Betriebsausgaben  
Kannkaufmann  
gewöhnliche Hauptversammlung

## P

parental leave  
Parent-Subsidiary Directive  
partnership agreement  
partnership limited by shares  
par-value share  
patent  
Payroll withholding tax returns  
permanent establishment

Erziehungsurlaub  
Mutter-Tochter-Richtlinie  
Gesellschaftsvertrag (Personengesellschaft)  
Kommanditgesellschaft auf Aktien (KGaA)  
Nennbetragsaktien  
Patent  
Lohnsteuer-Anmeldungen  
Betriebsstätte

## P

permanent residence permit  
personal income tax  
preference shares  
private law foundation  
progressive income tax rate  
property tax  
public health insurance funds  
public pension insurance  
public-sector banks

Niederlassungserlaubnis  
Einkommensteuer  
Vorzugsaktien  
Stiftung  
progressiv verlaufender Einkommensteuertarif  
Grundsteuer  
Krankenkassen  
gesetzliche Rentenversicherung  
Landesbanken

## R

real estate transfer tax  
registered merchant  
registered shares  
relief from double taxation  
restricted income tax liability  
restricted tax liability  
reunification surtax  
royalty payments

Grunderwerbsteuer  
eingetragener Kaufmann  
Namensaktien  
Vermeidung der Doppelbesteuerung  
beschränkte Einkommensteuerpflicht  
beschränkte Steuerpflicht  
Solidaritätszuschlag  
Lizenzzahlungen

## S

shares of stock  
sick leave  
small corporations  
social security  
social security contributions  
Societas Europaea (SE)  
sole proprietorship  
standard deduction  
statutory minimum wage  
stock corporation  
Supervisory Board

Aktien  
Abwesenheit wegen Krankheit  
kleine Kapitalgesellschaften  
Spezialversicherung  
Sozialversicherungsbeiträge  
Europäische Aktiengesellschaft  
Einzelunternehmen  
Grundfreibetrag  
gesetzlicher Mindestlohn  
Aktiengesellschaft (AG)  
Aufsichtsrat

## T

tax advisor	Steuerberater
tax exemptions	Steuerbefreiungen
tax ID number	Steuernummer
Tax Office	Finanzamt
tax-consolidating parent-subsidiary relationship	Organschaft
termination of employment	Beendigung des Arbeitsverhältnisses
trade marks	Marken
trade tax	Gewerbsteuer
transfer price documentation	Verrechnungspreisdokumentation
transfer prices	Verrechnungspreise
transformation	Umwandlung

## U

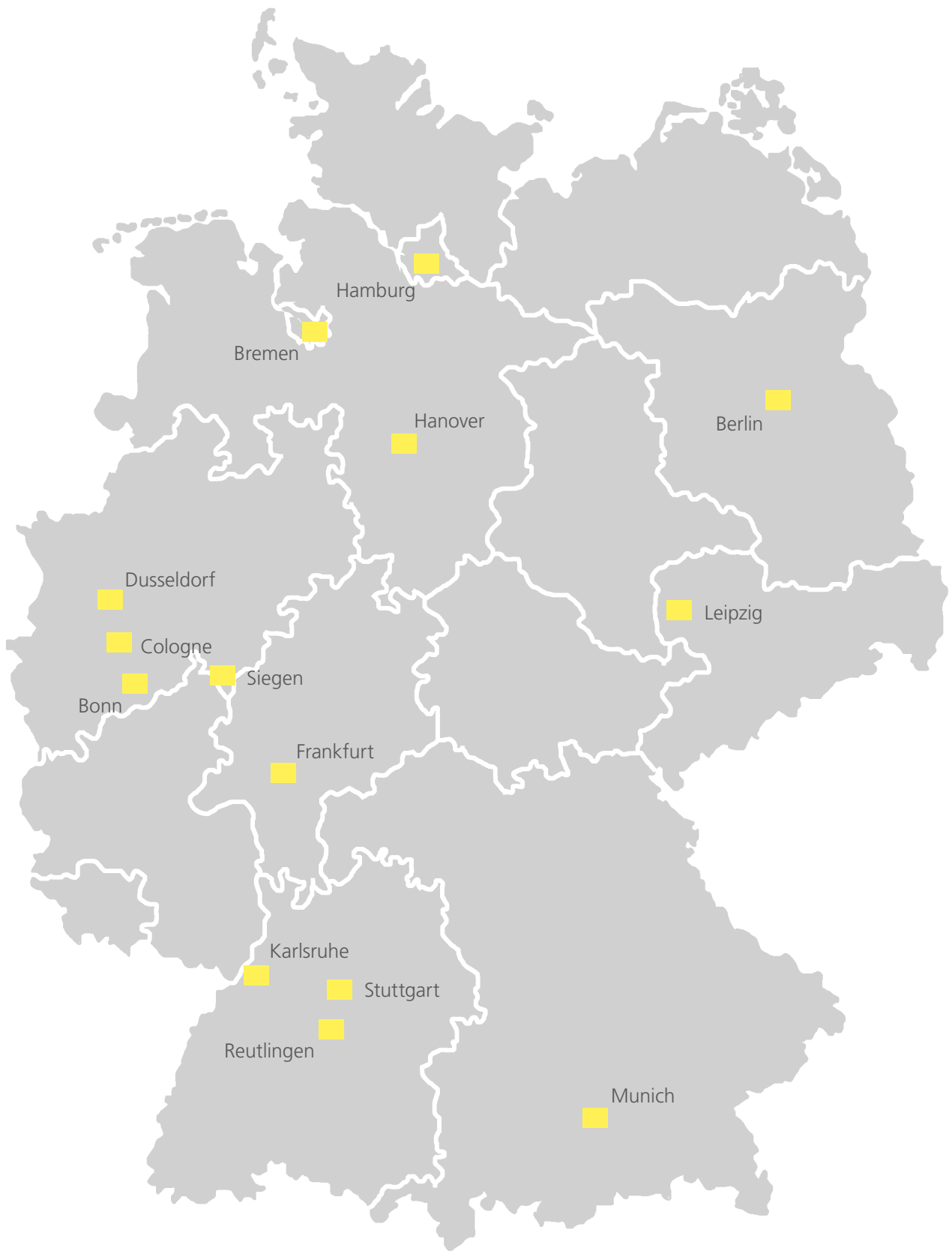
union	Gewerkschaft
unrestricted tax liability	unbeschränkte Steuerpflicht
upper house of the national parliament	Bundesrat
use of tax losses	steuerliche Verlustnutzung
utility model	Gebrauchsmuster

## V

value-added tax (VAT)	Umsatzsteuer
VAT returns	Umsatzsteuer-Voranmeldungen
very small corporations	Kleinstkapitalgesellschaften

## W

withholding tax	Quellensteuer
withholding tax for construction contractors	Bauabzugsteuer
work permit	Arbeitserlaubnis
works council	Betriebsrat



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