



## INVESTING IN GERMANY

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# 1 ABOUT RSM IN GERMANY

RSM in Germany is an independent German firm of chartered accountants, business and tax advisors with over 350 partners and staff across 12 offices in Germany.

We provide advisory and compliance services to a broad range of clients across many sectors and industries. Our approach is to work with clients to deliver a collaborative, technically sound and efficient service from a single point of contact. Above all, we identify opportunities to add value at every stage of our interaction with our clients in order to provide seamless service and support.

If you are looking to establish a business in Germany, we can help you understand the regulatory environment, register a German entity, understand tax requirements, and advice on immigration and employment practices.

Once a business is established, we can offer outsourcing solutions for accounting, payroll and tax compliance services, working together as your trusted business advisor as your German business grows.

If you are looking to grow through acquisition, we can assist in the identification and acquisition of a German business. In addition, if you are looking for access to capital markets we can assist you in obtaining a listing on the German stock exchange.

As part of RSM International, the world's 6th largest audit, tax, and consulting network, we are able to provide premier advisory services worldwide to support you with your international plans.

We have internationally recognized industry and service line experts in 760 offices in over 120 countries. Each of the network's member firms is independent; however, we have chosen to work together, resulting in strong professional relationships and efficient collaboration.

## About this guide

Germany is an attractive place to do business with a relatively benign corporate tax regime, and the benefit of access to both domestic and European markets. However, navigating through the regulatory requirements in Germany can be complex.

We have prepared this guide to help you to understand some of the most important considerations for doing business in Germany. This guide is not deemed to be all comprehensive, and should not be utilized as a substitute to professional advice. Representatives from our country desks or German offices will be delighted to introduce you to our experts, who can provide specific advice to cater to your individual needs and special circumstances.

FURTHER INFORMATION  
ABOUT AND INSIGHTS  
FROM RSM IN GERMANY  
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[WWW.RSM.DE](http://WWW.RSM.DE)

## 2 STARTING A BUSINESS IN GERMANY

As the beating heart of Europe's economy, Germany offers many excellent opportunities for investments. German goods are synonymous with high quality and are respected throughout the world. The country has the largest population within the European Union (EU), which provides modern infrastructure and human capital that attracts foreign investors who are managing the employment of more than two million jobs in Germany.

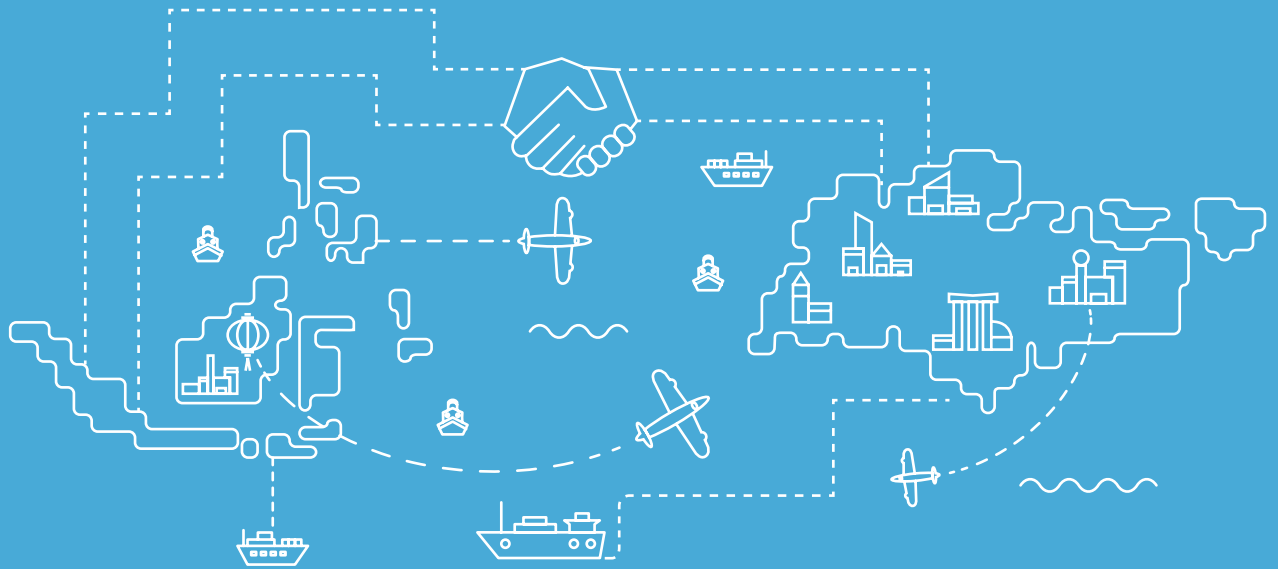
Globalization and international exchange is a reality for German companies. Germany is a leader in the exportation industry, it regularly ranked in the top three exporter worldwide. Despite its successful progression in internationalization, Germany's objective is to continue to encourage investment even further. Therefore, the country provides several incentives and subsidies for investments, flexible labor markets, and decreased levels of bureaucracy. German law caters to meet the needs of business challenges.

As an investor, it is necessary to have a solid business foundation to build upon. Good advice is critical throughout the whole decision making process. Lawyers, tax advisors, auditors, and business consultants with professional knowledge in these areas should be consulted from the beginning of any business activity in Germany.

### Things to consider

On average it takes only 10 ½ days to establish a business in Germany. However, the duration varies significantly on a case-by-case basis.

- If a business is started or taken over, it is required to be registered with the trade office.
- The tax office will normally be informed by the trade office of your foundation, however, they should be independently informed in order to save time and expedite the process. Upon registration, you will receive your tax number, which is essential to fulfil all tax compliance requirements
- Newly founded commercial business enterprises are obligated to register with the Commercial Register. Corporations and partnerships require a notary for registration.
- From the beginning of business operations, you automatically become a member of the Chamber of Commerce and Industry.
- Statutory requirements relating to occupational health and safety for employees should be considered to ensure the environment or the monument protection have been met.
- Depending on the business and its operations, individuals may be required to meet further stipulations.



- Depending on the legal form selected, a capital investment has to be made. In the case of a limited liability company (Gesellschaft mit beschränkter Haftung/GmbH), an equity capital contribution of 25,000 Euro must be attained. Alternatively, there is the Limited Liability Entrepreneurial Company (Unternehmergesellschaft/UG), a variation of a limited liability company (GmbH), in which a nominal capital of only one Euro is required.
- Corporations and partnerships must be led by at least one director, often by the partners, who are directly involved in the company. In the case of partnerships, it is possible to become a limited partner, while having more responsibilities and duties than a shareholder of a corporation has.
- Any German company is committed by law to create an annual financial statement. In addition to being the basis for taxation of the company, the annual financial statements should be present the entity's business plan and provide transparency to its shareholders.
- Companies should be taxed according to the principle of financial neutrality. Thus, from a tax perspective, the founding decision should not be influenced with respect to a legal form. However, the desired neutrality is not fully reached. Therefore, the taxation needs to be taken into consideration when you decide which legal form to take. In Germany, the following types of taxes arise through the course of business operations: income or corporate tax, trade tax and VAT, amongst others.
- In Germany, every citizen is protected by the institution of social security consisting of the German pension fund (Rentenversicherung – RV), statutory health insurance (gesetzliche Krankenversicherung – GKV), long term care insurance (Pflegeversicherung – PV), statutory accident insurance (gesetzliche Unfallversicherung – UV) and the unemployment insurance (Arbeitslosenversicherung – ALV). All entrepreneurs and business entities with employees in Germany are required to contribute fully or at least partly to these social security measures.
- Investment subsidies and incentives as well as corporate financing will assist start-ups in getting off the ground. In addition to private investors (e. g. venture capital firms, private investors or private equity firms), public institutions make funds available for the promotion of a location or to retain investors. In the EU, there are federal and state level programs, which allow companies to access loans, subsidies, equity funds or guarantees. Certain conditions must be met to receive these incentives.

### 3 GENERAL INFORMATION ABOUT OPERATING IN GERMANY

Germany can provide many outstanding opportunities, it has developed into a progressive and forward thinking industrial country in the heart of Europe. The German economy is driven by industry and trade firms operating successful business ventures worldwide. This success has stemmed from effectively, efficient run small to mid-sized national companies. This led to Germany being globally recognized as an economic nation, with an emphasis on trade, while specializing in economic exports. Although the country does not possess natural resources, it has skilled craftsmen and laborers that are considered to be Germany's most desired resources.

The rich variety, apparent in all aspects of German life and culture, is the perfect foundation for any person or business to succeed.

#### Legal system

The Federal Republic of Germany is a democratic state under the rule of law. As a federal nation, Germany is composed of 16 separate states. Due to task sharing between the Federal Republic and the separate states, each state maintains local laws in addition to the national laws. The foundation of all laws is the "Grundgesetz" (constitution) and every law must be in compliance to avoid legal invalidity.

The legal system in Germany is divided into four areas: Constitutional Law, Public Law, Criminal Law and Private Law. The four branches are combined into two larger groups. One group, Public Law, regulates the relationship between public authorities and private persons. Also included under Public Law are Constitutional Law and Criminal Law. The other group, Private Law, regulates the relationships between private citizens.

#### Political System

The cornerstone of the German democracy is the separation of powers. The three branches in Germany are the "Gesetzgebung" (Legislative), the "ausführende Gewalt" (Executive) and the "Rechtsprechung" (Judiciary). The Executive branch in Germany is led by either the Federal or the State government. Specifically important for independence from the national government is the judiciary branch. The legislative branch is responsible for drafting and amending the national legislation and is represented at the national level by the "Bundestag" (German Federal Parliament) and the "Bundesrat" (Federal Council). Each governmental body is required to follow the constitutional law.



Elections for the German Parliament are held nationwide. The government is elected by the majority of parliament, which is often formed by two or three parties in form of a coalition. In fact, the German political system is well-known for its stability.

Besides forming the government, the task of the Bundestag is the passing of legislation and the regulation. The German Parliament elects also the "Bundeskanzler" (Federal Chancellor) from among its members. The Federal Convention appoints the "Bundespräsident" (Federal President). The Bundespräsident's duties are mostly representative.

### Courts in Germany and the EU

Germany has functionally specialized courts to address various professional demands of the modern justice systems. Additionally, because of its federal structure and the European integration process, the Federal Republic of Germany has courts of different levels.

- **European Court of Justice:** Located in Luxemburg, the European Court of Justice serves as the judiciary court for matters that involve the European Union. As the highest court of the European Union, its main objective is to guarantee equal interpretation of European rights. The European Court of Justice cannot supersede an individual state's ruling when it related to national matters.
- **Constitutional Court:** The state's Constitutional Courts and the Federal Constitutional Court preside over all constitutional issues, such as the settlement of disputes between the federal government and an individual state.
- **Civil Courts:** Civil and criminal cases fall under the jurisdiction of this court system. Germany has four levels of courts: local courts, district courts, higher regional courts and the Federal Court of Justice. Proceedings in question are assigned to the appropriate court.
- **Administrative Court:** In many instances, the Administrative Courts may supersede adversary proceedings of the public administration.
- **Social Court:** Similar to administrative courts, except that disputes are focused on social security institutions.
- **Labor Court:** Responsible for disputes between employees and employers, as well as employer associations and trade unions.
- **Finance Court:** The purpose of the finance court is to preside over tax and duty issues.



## Germany in the EU

The European Union currently has 28 members and is more than just an economic association guided by the four European freedoms. It has become an international leader in the creation and execution of social policy, foreign policy, and environmental, and energy policy. The institutions of the European Union (European Commission, Council of the European Union, and the European Parliament) are represented with headquarters in Brussels and Strasbourg. As an economic leader in Europe, Germany is an influential member of the EU.

As an entrepreneur, there are considerable advantages of investing within the Member States:

- Free movement of goods (Articles 28–37): No restrictions (e. g. tariffs) are imposed on the trade of goods between member states. An EU resident is able to produce goods in their homeland and market them anywhere within the EU, without restrictions.
- Freedom of movement and establishment (Articles 45–55): Companies may integrate into other member states and establish durable and stable economic organizations. Individuals are also privy to freedom of movement and establishment, and should not be discriminated against living anywhere within the EU.
- Freedom of services (Article 56–62): Services may be offered freely and without restriction in all EU Member States as long as the provider is a citizen of a Member State.
- Free movement of capital (Article 63–66): Capital may be transferred freely between Member States. In addition, countries outside the EU may also utilize the free movement of capital.

## Monetary Union

The Treaty of Maastricht established the European Economic and Monetary Union (EMU) and the introduction of a common currency to all EMU Member States was commenced on 1 January 1999. Most responsibilities of the German Federal Bank were transferred to the European System of Central Banks (ESCB) in the course of the introduction of the European Monetary Union in 1999. The Euro has been adopted in Germany on 1 January 2002. Currently, the Euro is the official currency in 19 of the 28 EU Member States and 4 associated states. It has been established as the main international currency next to the U.S. Dollar.

## Market Economy System

Germany's economic system is a social market economy, which is based on the principles of the free market economy combined with the ideas of social balance and security. Private property and free markets guarantee the benefits of a balanced system of supply and demand, whereas government interventions are executed to improve market results and ensure social peace and justice. Therefore, the state may encroach on the market, if the risk of a monopoly is present. Simultaneously, the state must promote individual responsibility. The free market economy and social action by the state are not in conflict with each other in Germany, rather they work together to balance social responsibility while increasing wealth.

## Germany as a trading center

The economic performance of Germany is driven by the production of goods and the performance of services, whereas the production of raw materials and agriculture has very little significance. Germany has been recognized globally in recent years as an "export champion." The German trade surplus, most recently 266.0 billion Euro in 2016, increases consistently at a high level. Germany's most important trade partners in 2016 were China (170.0 billion Euro trade volume), France (167.0 billion Euro trade volume) and the U.S.A. (164.8 billion Euro trade volume).



#### Practical Advice:

- In certain cases, German customs authorities offer the possibility to declare goods online ([www.zoll.de](http://www.zoll.de)).
- Tariff information is available via the TARIC site of the EU ([www.ec.europa.eu](http://www.ec.europa.eu)).

Important sectors of German industry include automotive, mechanical and electrical engineering, chemistry, optics and precision engineering, medical technology and biotechnology as well as nanotechnology, aerospace products and logistics. On the other hand, Germany possesses limited natural resources and is therefore very dependent on imports for their energy needs. For many years, Germany has encouraged and experienced broad public acceptance for renewable energy.

#### Practical Advice:

- In Germany, it is advisable to register any intellectual property. Patents may be obtained from the German Patent and Trademark Office ([www.dpma.de](http://www.dpma.de)). Note: Acquired patents in Germany are only valid in Germany. Their scope may be extended to the EU region at the European Patent Office and to more than 100 countries at the World Intellectual Property Organization.
- Business connections can be made quickly and easily, regardless of whether at fairs, trade associations or internet portals.



## 4 COMPANY LAW

### The Legal Forms

Germany provides numerous legal forms for establishing a business. The choice of the legal form depends on many different factors, including liability, taxation and accounting. An entrepreneur is not locked into a specific legal form after making his initial selection. Fortunately, as your business evolves, the German law allows for the ability to adjust legal forms. To assure that the proper and most beneficial legal classification for your business is made, it is advised to seek the joint advice of a tax expert and corporate lawyer. In the following sections, we introduce the common legal forms in Germany as well as other relevant information regarding Company Law.

### Individual Enterprise

The most basic legal form in Germany is the individual enterprise. Only one individual is required for its establishment. It is simple and cost-efficient to start an individual enterprise and no formal agreement is required. However, the proprietor must adhere to certain notification requirements. With the commencement of the business activities, the local trade office must be notified. If the entrepreneur wishes to operate a trading company, the individual must register at the Commercial Register. Subsequent to notification and registration, all rights and duties of a proprietor are assumed. As a proprietor, one is committed to follow the Generally Accepted German Accounting Principles, e. g. maintain accounting records and create financial statements.

As an individual enterprise, a deposit of minimum capital is not obligatory. However, the proprietor is completely and immediately liable and must personally assume any debt incurred through the operation of the business activities. However, the proprietor is entitled to any profits and controls the management of the business.

### Partnerships:

#### Civil Law Partnership (Gesellschaft bürgerlichen Rechts – GbR)

In order to establish a Civil Law Partnership, you are required to have at least two separate parties. Some of the more common forms of Civil Law Partnerships are group

and joint practices, such as dental offices or law firms. The partnership agreement may be oral, written or conclusive. However, it is highly recommended that a partnership agreement is formed in writing. This ensures that critical issues such as management and representation along with shareholder resolutions, retirements and withdrawals are all clearly stated and agreed upon. It is in the disposition of the partners how to rule the distribution of profits between the partners. There are no start up or registration fees with the commercial register if a Civil Law Partnership is formed, unless the business activity considered a commercial enterprise. In this case, a registration at the local trade office is required. There are no limits for a Civil Law Partnership. In addition to the assets of the partnership, a partner can be held personally liable. It is common for partners to be held liable based on their proportionate level of contribution, however, the partnership agreement may stipulate otherwise.

#### General Commercial Partnership (Offene Handelsgesellschaft – OHG)

A General Commercial Partnership is a coalition of merchants that operate a medium to large sized corporation involved specifically in commerce activities. It is a precondition that at least two individuals or legal entities are involved in the formation. The term "OHG" must be included in the company name.

There is no standard form for the partnership agreement. The only recommendation is that the agreement is documented in writing. The registration with the Commercial Register and the local trade office are required, as is the notification concerning the appointment and retirement of partners. There are no regulations regarding minimum capital requirements upon creation. A capital contribution by a partner to the OHG can be in the form of cash, non-cash assets or services. The main setback with regard to OHGs is that all partners are wholly liable. Generally, all partners are qualified to run the business. According to the commercial code, a General Commercial Partnership is a business entity and is therefore committed to maintaining accounting records and producing financial statements.

## Partnership Company (Partnerschaftsgesellschaft – PartG)

The Partnership Company has been designed specifically for the use in professional freelance activities. Only individuals are entitled to establish a Partnership Company. They are not permitted to provide commercial services. A Partnership Company provides the possibility of limited liability for the partners.

A freelancer is defined as a person providing personal, self-dependent and professionally independent specialty services in the interests of clients and the general public. Freelancers include, but are not limited to, doctors, lawyers, journalists and auditors.

The partnership agreement must be in writing. It must include the name and the location of the business, the purpose of the partnership as well as names, professions and residences of the individuals. Management, representation and the appropriation of assets is regulated by the partnership agreement. Finally, the partnership agreement must be notarized and submitted to the Partnership Register. Any significant changes within the partnership must be reported to the Partnership Register.

The partners are jointly liable for the debts and liabilities unless losses are linked to specific occupational error by a specific partner. The legal foundation is based on partnership law.

## Limited Partnership (Kommanditgesellschaft – KG)

The Limited Partnership consists of at least two individuals or legal entities. At least one of them, the general partner, is personally liable without limitation. The other partner(s) are considered limited partner(s) and their liability is limited to their contribution. Generally, the general partner is responsible for the management of the partnership, whereas the limited partners assume more of an investor role.

The establishment of a KG requires a written agreement between the partners and must be entered in the Commercial Register and the local trade office. The application for the entry into the German Commercial

Register needs to be notarized. The term "KG" must be included in the company name. A minimum deposit is not imposed upon formation. The main advantage of the Limited Partnership is that it can increase capital through the further accumulation of limited partners. According to the commercial code, a Limited Partnership is a business entity and is therefore committed to maintaining accounting records and producing financial statements.

## Corporate Partnership (GmbH & Co. KG)

The GmbH & Co. KG is a special form of partnership with a GmbH as the general partner. The other members participate as limited partners. Any external person is able to invest in the partnership. The GmbH & Co. KG usually operates as a commercial entity.

At least two partners are required in order to establish a GmbH & Co. KG: A GmbH is required to have a general partner and at least one limited partner. Partnership agreements for the GmbH & Co. KG must be formulated and certified by a notary before the entry is submitted to the Commercial Register. The GmbH must have a minimum share capital of 25,000 Euro before registration can proceed. The limited partners are not required to make a contribution in this amount. To keep the liability of the general partner as small as possible, only the minimum capital contribution is used in practice. The partnership agreement includes resolutions regarding management and representation, profit and loss distribution, majority decisions and succession plans for the company.

The general partners are usually responsible for managing the business, and are represented by the managing director of the GmbH. Limited partners are excluded from managerial duties, but are only liable to the extent of their contribution. Appointment and retirement of a limited partner must be reported to the Commercial Register. With the entry of new limited partners, the GmbH & Co. KG is able to raise capital. It should be noted that the GmbH and the KG are two different company types and therefore require separate bookkeeping and incur separate expenses.

## Corporations:

### Private Limited Liability Company (Gesellschaft mit beschränkter Haftung – GmbH)

The GmbH is the most popular business entity in Germany, because of the limited liability that it offers its owners. One or more individuals are able to form a GmbH. The company must fund at least 25,000 Euro of equity in the form of a cash deposit, in kind capital contributions or a mixed deposit. The GmbH requires notarized Articles of Association and a registration in the Commercial Register by the notary. Until this registration is completed, the company is considered liable without limitation.

A GmbH is legally obliged to have at least one manager. Regulations for management and representation are defined in the Articles of Association. In addition to procedures regarding majority rulings, the Articles of Association must include basic company information such as name, place and purpose of the company. The most important aspect of the GmbH is the shareholders' meeting, where the shareholders meet and deliberate over the state of the company.

As previously mentioned, there is no personal liability for shareholders. Any profits may be distributed or retained. The regulations regarding the profit distribution (e. g. protection of minority shareholders) are also stated in the Articles of Association. Since the modernization of the GmbH law in 2008, the opportunity to complete a foundation by a "Musterprotokoll" (a standardized governmental form) provides a faster and a simpler establishment.

### Limited Liability Entrepreneurial Company (Unternehmergesellschaft – UG)

The Limited Liability Entrepreneurial Company (UG) was developed as an alternative to the GmbH. The main difference in the form of organization is the amount of required capital due upon formation. Only one Euro must be held as capital stock prior to registration. Because of this low capital requirement, the UG is beneficial for financially weak founders. However, a counter problem to maintaining a small capital base exposes the company to high risk of bankruptcy and a low credit rating upon formation. To counter this risk, the formation of reserves is mandatory. Twenty five percent of profits must be paid into a capital surplus account until the GmbH minimum capital stock of 25,000 Euro is reached. The company may then choose to become a GmbH. The UG was introduced to the German legal system in order to have an alternative to the English limited company. The UG goes through the same formation process and has the same formation requirements as a GmbH. The company name must include "UG (haftungsbeschränkt)" to clarify to third parties the legal form of the entity.

For a UG, the accounting obligations mirror the obligations of a GmbH.

### Stock Corporation (Aktiengesellschaft – AG)

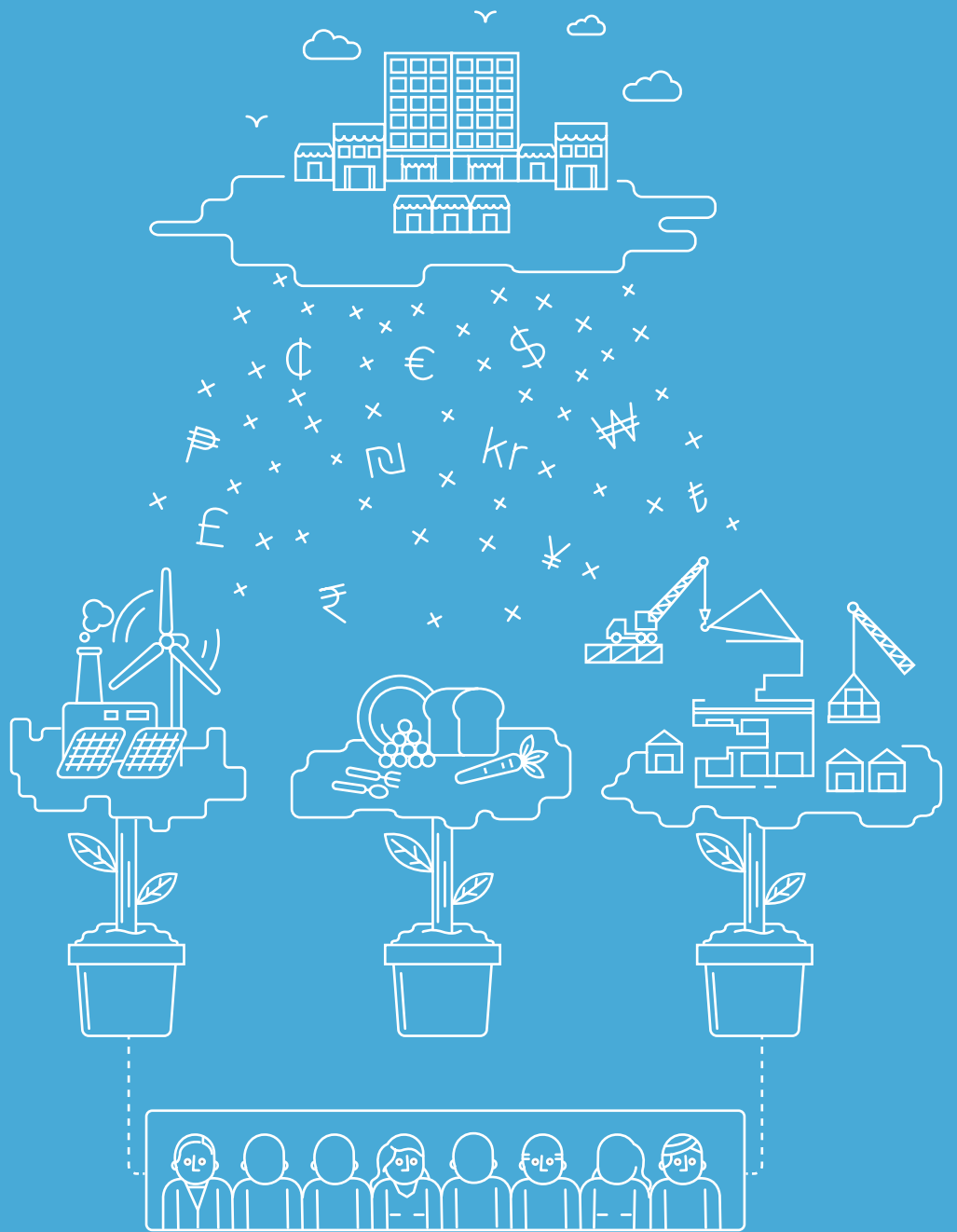
A Stock Corporation requires a higher capital contribution of at least 50,000 Euro of equity, which is distributed in form of shares to the initial investors. The capital stock of a Stock Corporation is divided into shares that may be transferred and traded; an AG is not obliged to "go public". At least one initial investor must be involved in the establishment of a Stock Corporation. The bylaws, or statutes in the case of a Stock Corporation, must be notarized. Prior to the registration, the company and the shareholders are fully liable for any debt incurred. After the registration, liability shifts to the corporation.

A Stock Corporation consists of the Executive Board, the Supervisory Board, and the Annual General Meeting (AGM). The AGM provides the shareholders the opportunity stay informed about the state of the company and to make decisions concerning amendments of the statutes, discharge and appointment of the board of directors and the supervisory board, approval of accounts, appropriation of profits, appointment of the auditor and the dissolution of the corporation.

The board of directors (Executive Board), as the executive body, is responsible for the development of the AG. The members of the Executive Board are not bounded by instructions but are overseen by the supervisory board. The board is usually headed by a chairman, who is elected by the supervisory board. The board members are personally liable if their gross negligence results in a liability to the business. Directors and officers insurances are available for board members for such cases.

The supervisory board is primarily a monitoring institution over the executive board. The supervisory board is guided by a chairman and also appoints the auditors. An AG requires very specific and stringent accounting procedures. The financial statements of a public company must consist of a balance sheet, a profit and loss statement and the annual report. The annual report shall be prepared in the first three months of the new financial year by the board of directors in accordance with the provisions of the Commercial Code (HGB). The auditors then examine the financial statements and issue an opinion. Upon completion of the audit, the financial statements are presented to the board. Furthermore, the board must submit the audited financial statement, the annual report and a proposal for the appropriation of profits to the supervisory board. After examination by the board, the statements are presented at the general meeting, where the decision on the appropriation of the retained earnings is made. Finally, the





executive board publishes the financial statements in the commercial register and Federal Gazette. Listed Stock Corporations must also provide a financial statement under International Financial Reporting Standards (IFRS). Statutory provisions are reflected in the Stock Corporation Act (AktG).

### Special forms:

#### European Company/Societas Europaea (SE)

The European company is a special form of Stock Corporation. It is the preferred legal form for corporations operating across Europe. The EU hopes to achieve continuity among financial reporting and law principles of its member countries with the creation of the SE. The benefit of a SE is that the holding company's subsidiaries are subject to the same regulations across Europe. However, the national regulations for each country must be respected and followed, because the EU regulation for an SE is only the legal framework.

There are several alternative approaches to form a SE. They include cross-border mergers of existing corporations from different Member States, the formation of a joint subsidiary by the combination of at least two companies from different Member States or the change of the corporation form of a national Stock Corporation. The European company has its own legal form. As a corporation, the minimum required capital contribution is 120,000 Euro. The subscribed capital is divided into shares, and each shareholder is only liable in the amount of his deposit. The SE, as a legal entity, is liable for all obligations with its own assets. The SE must be registered in each respective Member State (i.e. the commercial register in Germany).

#### Partnership Limited by Shares (Kommanditgesellschaft auf Aktien – KGaA)

The Partnership Limited by Shares (KGaA) includes features of both, partnerships and corporations. The KGaA is a commercial company and therefore a business entity under the Commercial Code.

There are two types of shareholders who must be distinguished. First, the general partners are the only members of the company that are capable of making management and representation decisions. They are personal liable. Second, limited partners are the equivalent of shareholders in a Stock Corporation.

A KGaA raises capital by receiving contributions from limited partners and general partners. 50,000 Euro is required as an initial contribution, which is the same requirement for a Stock Corporation. The contributions are treated differently for general and limited partners. General partners are

exposed to unlimited liability and as such entitles them to a dictatorial role within the company. As a result, their consent is required for any fundamental decision regarding the business.

The limited partners have advantages and disadvantages compared to the shareholders of a public company. They have the right to take part in special decisions affecting the company. At the same time, the supervisory board has no power to make changes to the management (the general partners), so they have very little input on the final decisions as compared to an AG's shareholders. The KGaA is especially popular in family businesses, because it is resistant to takeovers. Even if more than 50 percent of the company is owned by limited partners, the general partners remain in control of the business operations. Statutory provisions are reflected in the Companies Act (AktG) and the provisions of the limited partnership.

### Change of corporate form

It is possible to change a company's legal form; it is referred to as "change of corporate form." The reasons for reorganization are diverse, e. g. diversification of the capital base, increasing the creditworthiness of the business, risk diversification, succession problems, favorable taxation and preparation for a merger. There are four forms of business transformations: merger, demerger, transfer of assets and liabilities, and the change of form. The legal basis for each case is regulated by the Transformation Act (UmwG).

### Commercial Register/Register of trade

For most types of companies, the entry in a register is a precondition for establishment. In Germany, this must be completed at the Commercial Register. Companies must be registered if they represent a commercial business operation.

The electronically-maintained index pages contain information about the company, location of business, business object, management and representation, legal form, capital stock and limited partners. The entries are continuously updated to provide up-to-date information. A one-time fee is incurred for commercial registration as well as for each printout.

#### Practical Advice:

- The commercial register is available in electronic form at [www.handelsregister.de](http://www.handelsregister.de)
- Company information is also available via the business register at [www.unternehmensregister.de](http://www.unternehmensregister.de)

## 5 ACCOUNTING

### German Commercial Code/IFRS

The main focus of accounting is the clear, ongoing and systematic documentation of operational procedures. According to § 238 par. 1 GCC (German Commercial Code; HGB) every businessperson, e. g. basically anybody running a commercial enterprise, is obliged to keep books in compliance with the Generally Accepted Accounting Principles as stated in the German Commercial Code. An exemption exists only for sole proprietors, who do not generate sales higher than 600,000 Euro and earnings higher than 60,000 Euro on a regular basis. The Generally Accepted Accounting Principles in Germany put special emphasis on creditor protection, necessitating the prudent valuation of assets and liabilities. Fundamental to this approach is the consideration of all foreseeable risks and unrealized losses at the balance sheet date, while profits may only be accounted for upon realization (§ 252 par. 1 no. 4 GCC) with the exception of currency translation with remaining term within one year. Further material accounting and valuation principles are the historic cost accounting principle (§ 253 par. 1 GCC), the going concern premise (§ 252 par. 2 GCC) and the retention of valuation methods in preceding financial statements (§ 252 par. 6 GCC).

Computations always have to be made in Euro; books and records need to be kept for up to ten years (§ 257 GCC). For simplicity, it is advisable to maintain books and records in Germany. The financial year may not exceed twelve months (§ 240 par. 2 GCC) and usually corresponds with the calendar year.

Any company that is legally required to maintain accounts must create financial statements consisting of a balance sheet, a profit and loss statement and, depending on the legal form and size of the company, explanatory notes and a management report. Explanatory notes are obligatory for corporations (GmbH, AG) and commercial partnerships as defined in § 264a GCC (e. g. GmbH & Co. KG, AG & Co. KG), supplemented by a management report for large and medium-sized corporations. The classification in micro, small, medium-sized and large entities is done based on balance sheet total, turnover and average number of employees per annum (§§ 267, 267a GCC). Not all three criteria have to be met to fulfill the requirements of the respective category, but two out of the three criteria have to be met in two consecutive years (exception in case of start-ups and restructurings, e. g. (de)mergers).

CRITERIA	MICRO	SMALL	MEDIUM-SIZED	LARGE
Balance sheet total	< TEUR 350	< EUR 6 million	> EUR 20 million	> EUR 20 million
Net Turnover	> TEUR 700	> EUR 12 million	> EUR 40 million	> EUR 40 million
Average no. of employees	10	< 50	< 250	> 250





Capital market orientated corporations are always considered to be large entities and have to include a cash flow statement and an equity movement table within the annual financial reporting.

Each entity is required to conduct a physical inventory at the end of each business year to determine the assets on hand. The financial statements of large and medium-sized corporations must be completed within the first three months of the new financial year; whereas small corporations are allowed a six-month window for completion, (special deadlines apply for banks and insurance companies as well as proprietorships and partnerships).

German statutory audit requirements are likewise dependent on the legal form and size of the company. The financial statements of large and medium-sized corporations and commercial partnerships, as well as the annual accounts of companies in certain industries (e. g. insurance companies, banks), must be audited annually. It could be useful for small companies to execute a voluntary audit, for example, an audited annual financial statement is necessary to get a restriction for electricity costs (reduction of German EEG-contribution). Therefore, a decrease of electricity costs for manufacturing entities would result in positive impacts on the entity's financial position.

All corporations and commercial partnerships need to publish their annual financial accounts in the Commercial Register and the Federal Gazette within a 12-months-period (§ 325 GCC). Small corporations and small commercial partnerships usually disclose unaudited financial statements, while large and medium-sized corporations and commercial partnerships have to disclose the audited accounts including the auditor's opinion. There are various exceptions for micro, small and medium-sized enterprises in terms of preparation and disclosure requirements (§§ 326, 327 GCC).

## IFRS/IAS

Due to the traditionally separate legal systems of code law (mainly continental European countries) and case law (mainly Anglo-American countries), the harmonization of internationally diverse accounting standards becomes a necessity. The objective of the International Financial Reporting Standards and International Accounting Standards (IFRS/IAS) is to enhance international comparability of financial statements by means of common regulations.

As of 2005, the application of IFRS has become mandatory for the consolidated financial statements of capital market oriented companies in the EU. Beyond that, the EU member states were free to expand the scope of IFRS application to all annual and consolidated financial statements on a mandatory or facultative basis. In Germany, the respective EU regulation has been incorporated in such a way that those entities who have to prepare their consolidated financial statements according to IFRS – based on the EU regulation – have to additionally disclose information based on specific GCC requirements (e. g. the average number of employees, management's remuneration and annual auditing fees). In Germany, this is a requirement for all entities that have filed an application for listing. Furthermore, any parent company that is not a capital market oriented business may produce its consolidated statements according to IFRS on a facultative basis. The additional GCC disclosure requirements mentioned above also apply in this case.

The individual annual financial statements may not only be prepared under IFRS. Additional GCC based annual accounts always need to be prepared for profit distribution and tax computation purposes.

## 6 CORPORATE GOVERNANCE

### Definition

Corporate governance is the set of processes, customs, policies, laws and institutions affecting the way a corporation is directed, administered, or controlled. Corporate governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed. The principal stakeholders are the shareholders, the board, executives, employees, customers, creditors, suppliers as well as the community at large.

### German Corporate Governance Code

In Germany, the Government Commission adopted a "German Corporate Governance Code" on 26 February 2002. Primarily, the Code addresses listed corporations. It is recommended that non-listed companies also abide by the Code.

The German corporate code (the "code") consists of three elements. It presents legal regulations for the management and supervision of German listed companies (corporate governance), which are mainly referring to the Aktiengesetz (German Stock Corporation Act). Further elements include international and national acknowledged standards for good and responsible corporate governance, in the form of recommendations and suggestions.

According to the Government Commission the aim of the "code" is to make Germany's corporate governance rules transparent for both national and international investors, thus strengthening confidence in the management of German corporations. The Code addresses all major criticisms – especially from the international community – leveled against German corporate governance, namely:

- Adequate focus on shareholder interests
- The two-tier system of executive board and supervisory board
- Inadequate transparency of German corporate governance
- Inadequate independence of German supervisory boards
- Limited independence of financial statement auditors

According to the Government Commission, its purpose is to promote the trust of international and national investors, customers, employees and the general public in the management and supervision of corporations.



The Code clarifies the obligation of the Management Board and the Supervisory Board to ensure the continued existence of the enterprise and its sustainable creation of value in conformity with the principles of the social market economy.

### Dual Board System

A dual board system is prescribed by law for German Stock Corporations:

- The Management Board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise. The Chairman of the Management Board coordinates the work of the Management Board.
- The Supervisory Board appoints, supervises and advises the members of the Management Board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the Supervisory Board coordinates the work of the Supervisory Board.

Members of the Supervisory Board are elected by the shareholders at the General Meeting.

### Single Board System

The European Company (SE) gives enterprises in Germany the possibility of opting for the internationally widespread system of governance by a single body (board of directors). The form that codetermination is established generally by agreement between the company management and the employee side. All employees in the EU member states are included.

### Practical Impacts

In practice, the dual board system, also established in other continental European countries, and the single-board system are converging because of the intensive interaction of the Management Board and the Supervisory Board in the dual-board system. Both systems are equally successful.

The accounting standards of German enterprises are oriented on the "true and fair view" principle and represent a fair picture of the actual conditions of the asset, financial and earnings situations of the enterprise.

The German Corporate Governance Code will be reviewed annually against the background of national and international developments and will be adjusted, if necessary. It is structured as follows:

- Shareholders and the General Meeting
- Cooperation between Management Board and Supervisory Board
- Management Board
- Supervisory Board
- Transparency
- Reporting and Audit of the Annual Financial Statements

The Code also emphasizes the responsibility of the Management Board to ensure an appropriate risk management and risk controlling in the enterprise. This responsibility of the Management Board is closely linked to the legal requirement for the Supervisory Board to monitor the effectiveness of the:

- Internal Control System
- Risk Management System
- Internal Audit System
- Supervision of the accounting process and the statutory audit (§ 107 par. 3 Stock Corporation Act).

### Legal Basis

Through the declaration of conformity, pursuant to Article 161 of the Stock Corporation Act as amended by the Transparency and Disclosure Law, the Code has a legal basis.

The latest version of the Code is published on the internet page of the Governance Commission ([www.dcgk.de](http://www.dcgk.de)). This version of the Code includes the amendments resolved at the plenary meeting on February 7, 2017 and the amended version has also been published in the electronic Federal Gazette.

### Practical Advice

- Information about German Corporate Governance Code at [www.dcgk.de](http://www.dcgk.de)
- Electronic Federal Gazette at [www.bundesanzeiger.de](http://www.bundesanzeiger.de)

## 7 TAX LAW

The German tax law is complex, but is considered to be comparable with other countries. There have been several legislative changes in recent years to increase the attractiveness of investing in Germany. The significant change is the reduction of the corporate tax burden to less than 30%.

### Tax Liability

In general, any legal entity and individual persons are subject to taxation. Companies are considered to be legal entities. They are subject to taxes on earnings and sales. Individuals are normally liable for income tax (including solidarity surcharge) and inheritance tax.

Furthermore, a distinction is made between unlimited and limited tax liability. Generally, persons are liable for taxes based on their main place of residence within Germany. Consequently, all domestic and foreign income of the taxpayer is subject to taxation in Germany. Fortunately, double taxation agreements help the taxpayer avoid double taxation of foreign and German income tax. Non-permanent residents are considered to have limited tax liability. Therefore, their taxation is limited to the specific national income.

### Company Taxation

In Germany, the principles of separation and transparency are the focal points of company taxation. The principle of separation is applied to the taxation of corporations. In this instance, the company itself is taxed. The profit of the corporation and the income of the shareholders are taxed separately. While the profit of the corporation is subject to corporation tax, distributions to the shareholders or sale proceeds are subject to income taxation on the shareholders' level.

Partnerships are not subject to taxation due to the principle of transparency. The gain or loss is only determined on the level of the partnership, which is then attributed to the individual shareholders or co-entrepreneurs. Those revenues are subject to income taxation on the shareholders' level.

Every company, irrespective whether it is a corporation or a partnership, is subject to trade tax.

### Corporate Income Tax

Corporations, associations of persons and funds are considered to have unlimited tax exposure with regard to corporation tax ("Körperschaftsteuer"), if their management or place of business is within Germany. If these taxpayers have neither their management nor headquarters in Germany, they will be considered to have limited tax consequences with regard to their specific domestic income.

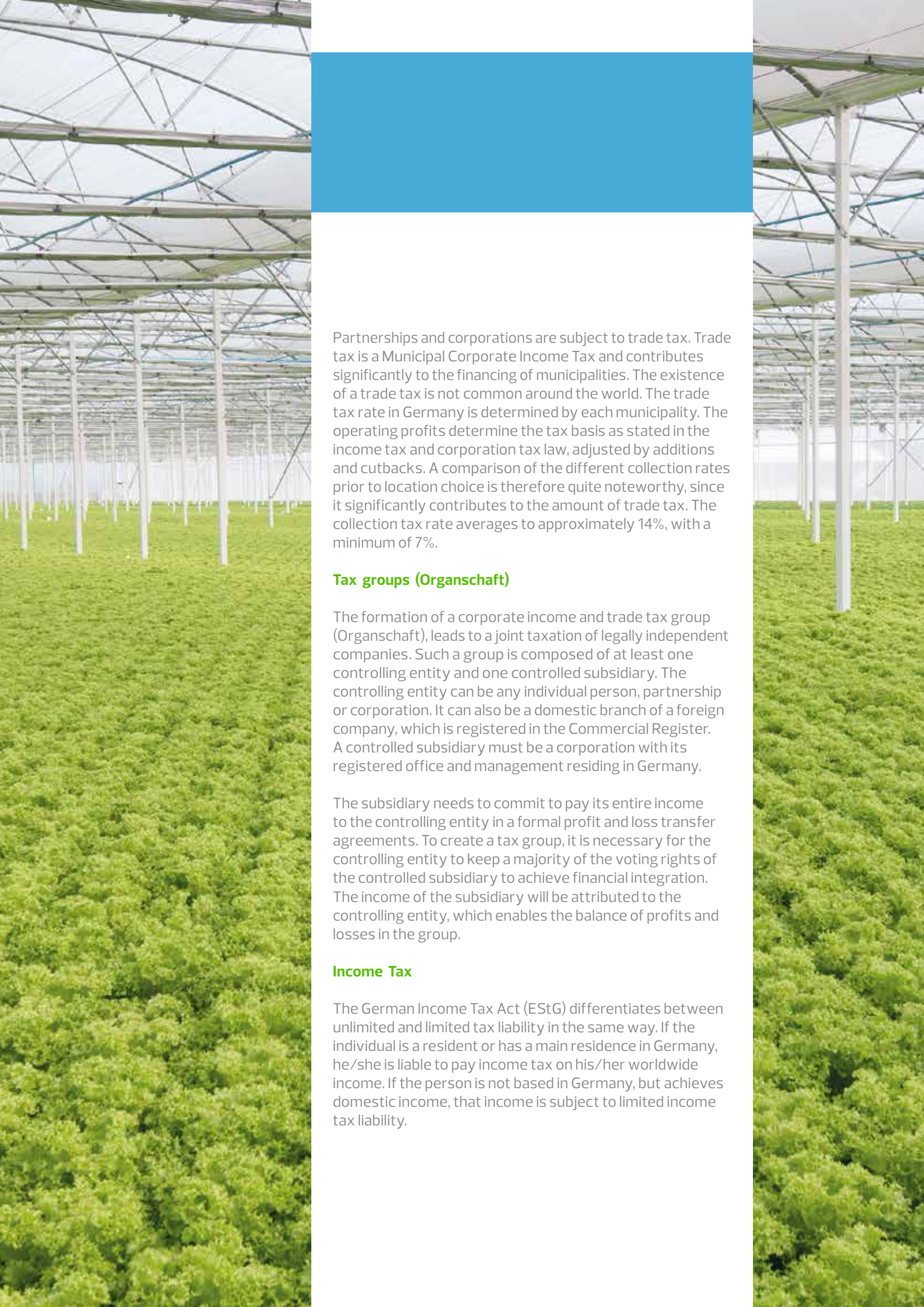
The tax rate is a standardized 15% (flat tax) and is assessed on the taxable income of the corporation. Any distributions to shareholders or similar parties are not considered in the determination of the corporation tax. In addition to the corporation tax, a solidarity surcharge (SolZ) will be levied at a rate of 5.5%. The assessment basis is the payable corporation tax. This results in an overall burden of corporation tax (corporation tax + solidarity surcharge) of 15.825%.

Capital gains from sale of shares of domestic and foreign corporations are effectively exempt from corporate income tax and trade tax up to 95%. If the owning corporation holds at least 10% of shares, dividends are also effectively up to 95% corporate-income-tax-free. If the corporation holds at least 15% of shares of the distributing corporation, dividends are deemed to be also effectively up to 95% trade-tax-free.

Additionally, companies have to pay trade tax on their taxable income.

### Trade Tax

Any business establishment that is operated domestically must pay trade tax ("Gewerbsteuer"). A business establishment is defined in the general Tax Code and encompasses foreign companies' permanent establishments in Germany.



Partnerships and corporations are subject to trade tax. Trade tax is a Municipal Corporate Income Tax and contributes significantly to the financing of municipalities. The existence of a trade tax is not common around the world. The trade tax rate in Germany is determined by each municipality. The operating profits determine the tax basis as stated in the income tax and corporation tax law, adjusted by additions and cutbacks. A comparison of the different collection rates prior to location choice is therefore quite noteworthy, since it significantly contributes to the amount of trade tax. The collection tax rate averages to approximately 14%, with a minimum of 7%.

### **Tax groups (Organschaft)**

The formation of a corporate income and trade tax group (Organschaft), leads to a joint taxation of legally independent companies. Such a group is composed of at least one controlling entity and one controlled subsidiary. The controlling entity can be any individual person, partnership or corporation. It can also be a domestic branch of a foreign company, which is registered in the Commercial Register. A controlled subsidiary must be a corporation with its registered office and management residing in Germany.

The subsidiary needs to commit to pay its entire income to the controlling entity in a formal profit and loss transfer agreements. To create a tax group, it is necessary for the controlling entity to keep a majority of the voting rights of the controlled subsidiary to achieve financial integration. The income of the subsidiary will be attributed to the controlling entity, which enables the balance of profits and losses in the group.

### **Income Tax**

The German Income Tax Act (EStG) differentiates between unlimited and limited tax liability in the same way. If the individual is a resident or has a main residence in Germany, he/she is liable to pay income tax on his/her worldwide income. If the person is not based in Germany, but achieves domestic income, that income is subject to limited income tax liability.

As mentioned earlier, due to the principle of transparency, the partnership is not subject to taxation itself. Instead, the income of the partners or co-entrepreneurs is taxable.

The following income is subject to income tax:

- Income from agriculture and forestry
- Business income
- Income from independent services
- Income from employment
- Income from capital
- Income from rental and leasing
- Other specific income

The determination of a tax rate in Germany is based on a progressive income tax scale.

The assessment basis is the taxable income. If personal income of 8,820 Euro in 2017 (9,000 Euro in 2018) (17,640 Euro for married couples in 2017 (18,000 Euro in 2018)) is exceeded, income tax is incurred.

The marginal tax rate is 14% and increases progressively to 42% for a taxable annual income of 54,058 Euro in 2017 (54,950 Euro in 2018) and 108,116 Euro for married couples in 2017 (109,900 Euro in 2018). Starting from a taxable annual income of 256,304 Euro in 2017 (260,533 Euro in 2018) and 512,608 Euro for married couples in 2017 (521,066 Euro in 2018), the highest tax rate of 45% applies for any additional income.

Upon request of the taxpayer, retained earnings are subject to a separate income tax rate of 28.25%. If retained earnings are withdrawn in subsequent years, consequent taxation at a rate of 25% takes effect.

As the final step of the income tax computation, the solidarity surcharge must be added. Additionally, church tax may apply. The taxable period is the calendar year, which may be different from the business year for some business enterprises.

Apart from the above, retained earnings distributions of corporations, such as dividends, are subject to withholding tax at a uniform rate of 26.375% including surcharge tax.

### **Income from capital**

Dividend distributions to shareholders domiciled in Germany are subject to withholding tax of 25% (flat tax) plus solidarity surcharge (uniformed tax rate of 26,375%). If the shares are held as private assets, the withholding tax becomes a final flat tax charge. In addition to dividends, the withholding tax will be applied to other capital income like interest or investment income.

In practice, the tax will be charged at the source. The respective companies transfer the tax amount directly to the appropriate tax authority. Foreign dividends are also subject to German taxation. The amount of German tax may be reduced by the foreign tax credit to avoid a double taxation. Upon application, a change to the personal income tax rate on capital income is possible due to the favorable test. The tax office examines whether taxation with the personal tax rate is favorable for the taxpayer.

Another option for shareholders, who hold at least 25% of the shares or are working for the company and their holding is at least 1%, is a change to the partial income procedure instead of the withholding tax of 26,375%. According to the partial income procedure, only 60% of the dividends are taxed at the personal income tax rate. All business expenses related to income are limited to 60%. If individuals or entities possess shares as business assets, and dividends are distributed or profits from the sale of shares are made, then the partial income procedure always applies.



### Transfer pricing

Transfer pricing represents amounts of internal transactions such as contracts, restructuring of business strategy and cost distribution agreements that are billed between different companies or permanent establishments in the same group (related parties). German tax law follows arm's length principle in cross-border relationships. That means the internal transactions must be treated as if they were executed with a third party. If the shifts of profits between related parties are disproportionate to the agreements, it is advisable to make adjustments to reduce the risk of double taxation. The consequences of not adhering to the arm's length principle are profit adjustments and, consequently, higher taxes imposed by the tax authorities. Transfer pricing adjustments by the tax authorities are usually based on the most disadvantageous point in arm's length range and penalties may be imposed.

The German tax authorities do not require taxpayers to make transfer pricing-related disclosures in annual tax returns. If the tax authorities request statements in the course of a tax audit, transfer pricing documentation in German must be provided to the tax authorities within 60 days. In addition, small companies with income from the sale of tangible goods to or with costs from the purchase of tangible goods from international related parties of less than 5,000,000 Euro and other categories of international related party income or costs of less than 500,000 Euro do not apply for these documentation requirements.

### Double Taxation Agreements (DTA)

By implementing double taxation treaties, countries attempt to prevent a taxpayer from being charged taxes on his income from different tax authorities in the same period. DTA are international treaties, and the German DTAs follow the OECD Model Tax Convention in general. A list of DTAs can be found at: <http://www.bundesfinanzministerium.de/Web/EN/Issues/Taxation/Double-taxation/double-taxation.html>

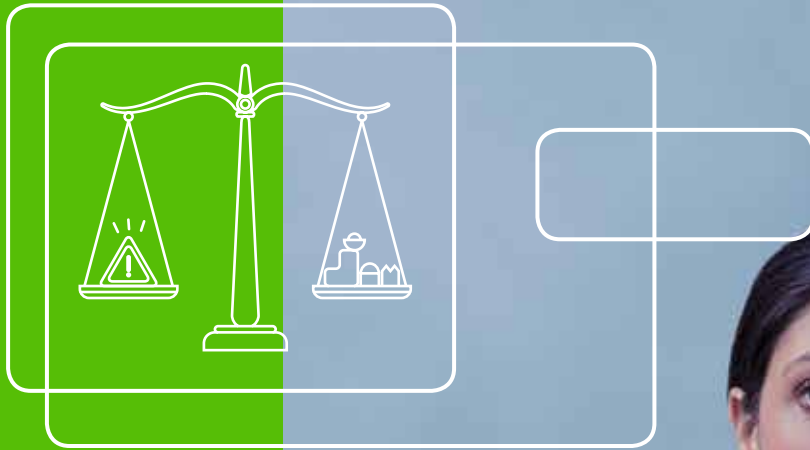
Every DTA will include income and property taxation procedures. Tax barriers should be eliminated or at least reduced accordingly. In doing so, the source state reverts the taxed income to the state of residence or the source state limits the taxation. On the other side, the residence state may exempt income, which may be taxed in the source state or the foreign tax may be creditable against the tax burden.

### Tax loss carry-forwards and carry-backwards

Taxpayers can claim losses in the calculation of their income tax. With tax loss carry-backwards it is possible to recognize losses of up to 1,000,000 Euro (joint assessment of spouses: 2,000,000 Euro) in the previous year. Similarly, through tax loss carry-forward, further losses may be deducted completely up to the amount of 1,000,000 Euro and 60% of future profits exceeding 1,000,000 Euro (2,000,000 Euro for jointly-assessed spouses).

The tax regulations for offsetting losses can also be applied in determination of the trade tax. A tax loss carry-forward is allowable and corresponds to the offsetting loss regulations of the income tax. However, a tax loss carry-back is not possible for trade tax purposes.

Ultimately, corporations can claim losses in the calculation of their income similar to individuals. However, corporate income tax law includes a loss carry forward limitation due to the direct or indirect transfer of shares, membership and voting rights. When there is an acquisition of more than 25% to 50% of shares, the corporation's loss carryforward is limited to a pro rata decline. If more than 50% of the shares of a corporation are acquired, losses may not be carried forward. The loss carryforward is maintained, if the business of the corporation is continued. Further exceptions arise when the transfer of shares takes place within a group or if the acquired corporation has sufficient undisclosed reserves.





## Interest Deduction Limitation Rule

The interest deduction limitation rule applies to corporations and partnerships as well as individuals. The aim of the legislators was to limit the possibility of companies who have international capital inflow into Germany to conduct a full tax deduction of interest expenses in Germany.

If interest expense exceeds the allowance of 3,000,000 Euro, the interest expense is deductible in the amount of accrued interest income during the same year. If the net interest expense exceeds the interest income, the interest expense is only deductible up to 30% of the tax EBITDA. Furthermore, a carryforward of any unused portion of the EBITDA is allowable. The carryforward is allowed for up to five years, if net interest expense in a given year is less than 30% of tax EBITDA. However, the carryforward is forfeited if the business is terminated, transferred or certain restructurings occur.

In addition, the interest capping rule does not apply to establishments that are not part of a group (stand-alone clause), or if the establishment is indeed part of a group, but the equity-ratio is not worse (minus 2%) than the equity-ratio of the group (escape clause).

## Anti-IP-Box Rule

Certain license expenses and other expenses for the transfers of rights are only limited deductible as operating expenses in Germany. This limitation applies for intra-group expenses, which are not taxed for the foreign recipient or are only levied at low rates due to a harmful preferential regime. The concerns of "IP boxes", "patent boxes" or "license boxes" are similar to the USA. Foreign boxes that require a significant business activity and therefore comply with the "Nexus Approach" agreed by OECD and G20 are not considered harmful and are therefore not covered by this restrictive operating expenditure regulation in Germany.

## Tax returns

A tax return is used to compute the base of taxable income and the amount owed to/from the authorities. In most cases, it must be filled annually and submitted to the tax office. A tax return consists of several parts and the applicable sections depend on the type of income of the entity or person. In order to ensure accuracy, it is advisable to utilize the professional services of a certified tax advisor. The deadline for submitting a tax return for fiscal year 2017 is May 31st of the following year. For fiscal years 2018 and beyond, the deadline to file the tax return is the 31st of July following the end of the fiscal year. If the tax return is processed by a tax advisor, the deadline is prolonged seven months until January 28th of the second following year. In special cases, the tax authorities accept a further extension of the deadline. There are tax authorities offices located in each district of Germany.

Tax returns for wage and value added sales tax might also be transmitted electronically to the tax authorities:

- [www.elster.de](http://www.elster.de).

The Federal Central Tax Office provides international administrative assistance:

- [www.bzst.bund.de](http://www.bzst.bund.de).

## Value Added Tax

Generally, the German VAT system follows the harmonized EU-VAT system according to the EU VAT-directive (Directive 2006/112/EC). The standard tax rate is 19%. In addition, a reduced tax rate of 7% is levied on certain goods and services, particularly on daily basic living expenses (e. g. food, newspapers). Certain transactions are fully exempt from VAT (e. g. healthcare, financial services).

The goal of the VAT system is to tax the supply of goods and services provided by an entrepreneur to a "final consumer." However, sales between entrepreneurs are also taxed with VAT. The VAT charged between entrepreneurs can be claimed back by the sale/service recipient as input VAT. Companies are allowed to deduct the input VAT from their VAT liability and only the surplus must be paid to the tax authorities.

Imports are also subject to VAT. If goods are imported from an EU-country, they are subject to normal VAT at the level of the German importer. If goods are imported from a Non-EU country, they are subject to import VAT, which is similar to regular VAT and has the same rates (19% and 7%). The main difference is that import VAT is not only levied against entrepreneurs, but can also be levied on individuals who import goods. Entrepreneurs who are enabled to deduct input VAT can also deduct import VAT as an input VAT.

Services are generally taxable in Germany, if they are carried out by a German entrepreneur to an individual, or if they are carried out by any entrepreneur (foreign or German) to a German entrepreneur. Although services carried out by a foreign entrepreneur to a German entrepreneur are taxable in principle, they are usually subject to the "reverse-charge" rule, which means that the tax has to be paid by the service recipient.

For the formation of a VAT tax group, the conditions of financial, economic and organizational integration must be met. If the tax group is accepted, the controlling company and related subsidiaries appear as separate entities, but the turnover of the group is only allocated to the controlling

company. The controlling company is the entity that is solely liable for the VAT, and it must submit uniform VAT registrations and an annual VAT return for the entire group. An advantage of the VAT tax group is that intra-group transactions are not taxable.

Foreign investors have to consider that they can also be treated as domestic investors for VAT purposes, if they have a "fixed establishment" in Germany. The prerequisites for a fixed establishment are not identical to the definition of a "permanent establishment" for income tax purposes. Generally speaking, a foreign investor can have a permanent establishment without having a fixed establishment, whereas the opposite is seldom. A fixed establishment is required to hand in regular VAT returns in Germany, similarly to a domestic entrepreneur.

### Property Tax

Properties within Germany as well as land based industries (agriculture and forestry) are subject to property tax. The amount of property tax is derived from the condition and the value of the property rather than the personal circumstances of the owner.



A number of calculations are required to ascertain the tax amount. The tax authority will determine the tax base by comparing similar units or replacement value of the property, and will notify the respective municipality. The tax base is usually significantly lower than the properties fair market value. Next, the municipality adopts its individual assessment rate at the tax base and assesses the property tax. In general, the property tax rate ranges between 0.26% and 1% of the tax base. For agricultural and forestry businesses it is fixed at 0.6%.

### Real Estate Transfer Tax

If the owner of domestic properties changes because of a purchase contract or similar transactions, a non-recurring real estate transfer tax arises. The parties involved in the acquisition process are considered to be the taxpayers. Normally, it is specified in the contract that the buyer is obligated to pay the tax liability resulting from the transaction. The tax rates are calculated individually by the German states and vary between 3.5% and 6.5% of the purchase price of the property. The buyer is only authorized to register the property into the land register when the real estate transfer tax is paid.

Specific transactions are exempt from real estate transfer tax, e. g. inheritances, donations "inter vivos" and the sale of property to direct relatives.

If 95 % or more of the shares of a property-owning partnership are transferred to one or more parties within five years, there is an additional real estate transfer tax imposed. In addition, if 95% or more of property-owning corporation or partnership shares are either unified in a single shareholder's hand or transferred to a single shareholder, taxes are due.

Indirect changes of ownership need to be taken into consideration as well.

### Inheritance and Gift Tax

In Germany, inheritances and gifts are basically taxed the same way. The tax base is generally the fair value of the assets, calculated according to the rules of the German valuation law, minus any corresponding liabilities that the heir takes over. There are numerous tax exemptions for everyday assets/gifts and a very significant tax exemption for business assets (e. g. partnership interests, shares in corporations). Business assets up to 26 million Euro can be fully exempt from tax, if they fulfill numerous strict rules before and after the transfer.

Once the tax base is assessed, tax allowance is deducted. The amount of the tax allowances depends upon the personal relation between the testator and the heir. The allowance amounts to 500,000 Euro for spouses, 400,000 Euro for children, 200,000 Euro for grandchildren and 100,000 Euro for parents in case of an inheritance (all of these are referred to as "tax bracket I"). For all other groups ("tax bracket II or III") it amounts to 20,000 Euro.

The tax rate is also determined by the personal relation and the size of the inheritance. For tax bracket I, it ranges between 7% and 30%, for tax bracket II, between 15% and 43%, and for tax bracket III between 30% and 50%.



## 8 LABOUR LAW

Qualified personnel are always welcome in Germany. Freedom of establishment and services prevails within the European Union (EU) for both wage earners and companies.

### Work permit requirements in Germany

If you would like to work in Germany, you generally need to apply for a visa, unless you are a national of an EU Member State, Iceland, Liechtenstein, Norway or Switzerland. Nationals of Australia, Israel, Japan, Canada, South Korea, New Zealand and the United States can also obtain the relevant documents after entering Germany. All other immigrants are required to apply for a visa before arriving in Germany.

A person can only begin permanent employment after a valid visa has been issued.

#### Practical Advice:

The Federal Minister of Labour and Social Affairs provides continuous Q&A catalogues regarding employment information for foreigners in Germany ([www.bmas.de](http://www.bmas.de)).

### Working Conditions in Germany

#### Income and Wage Tax Responsibility

In Germany, you have to pay taxes on your income and social insurance contributions. This is dependent on whether you are deemed to be an employee or self-employed.

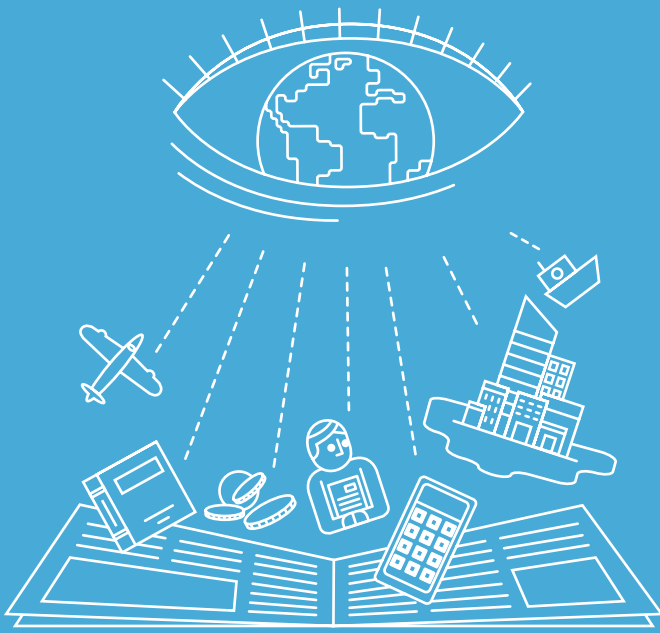
As an employee, you receive your net income transferred to your bank account from your employer. The employer will deduct pension insurance, health insurance, unemployment insurance and long-term care insurance from your wages and make these payments on your behalf. In addition, wage tax, the solidarity surcharge and (if applicable) church tax will be paid to the tax office.

If you are self-employed, you are responsible for paying your taxes.

In case of marginal employment (Mini Jobs with a compensation of 450 Euro on annual average and Midi Jobs with a compensation of 450.01 – 850 Euro on annual average) there are some peculiarities.

#### Working hours

In Germany, working hours during a working day may in general not exceed eight hours and thus 40 hours per week for a five-day workweek (or 48 hours per week for a six-day workweek). Sundays are generally non-working days. In exceptional cases, an extension of working hours to a maximum of 60 hours per week or 10 hours per day is allowed, subject to certain conditions.



Break times during the working day are determined by law and have to be respected. Depending on the daily working hours, employees with a working time of six to nine hours are entitled to take a break of at least 30 minutes. If the working hours are more than nine hours, at least 45 minutes must be given. These breaks may also be divided into 15-minute blocks.

### Compensation

The statutory minimum wage as of January 1, 2017 is 8.84 Euro per hour. Furthermore, a general and uniform minimum wage exists in special branches (e. g. nursing service, building industry). Besides the minimum wage requirements, the level of wages and salaries are freely negotiable. Compensation levels may fluctuate depending on the region of employment.

#### Practical Advice:

- The website [www.lohnspiegel.de](http://www.lohnspiegel.de) provides information on the level of the average compensation in your industry.

### Vacation and holidays

Statutory vacation entitlement in Germany is at least 24 paid vacation days per year in case of six working days per week (20 paid vacation days per year, if the workweek is five days). However, employer grant in practice 26–30 paid vacation days per year if the workweek is five days.

Holidays in Germany vary from state to state. Nationwide uniform holidays are:

- New Year's Day (1 January)
- Good Friday (Easter Sunday – 2 days)
- Easter Monday (Easter Sunday + 1 day)
- Labor Day (1 May)
- Ascension Day (Easter Sunday + 39 days)
- Whit Monday (Easter Monday + 50 days)
- Day of German Unity (3 October)
- Christmas Day (25 December)
- Day after Christmas (26 December)

#### Case of illness

In case of illness, the employee is obliged to inform the employer immediately. In general, this should be done on the first day of illness. Furthermore, the employee must provide a medical certificate if the duration of the ailment is longer than three days.

In Germany, the continuation of compensation exists in cases of illness. Under this provision, employees receive the full amount of wages or salary for up to six weeks.

## Statutory social security

Germany provides, unlike most other countries, a social insurance system for every citizen composed of health insurance, pension insurance, unemployment insurance, long-term care insurance and accident insurance. All employees are subject to social security contributions and their respective company must pay their required share. Except for accident insurance, all contributions are split by the employer and employee. The accident insurance is paid just by the employer.

The State itself must provide assistance, in the form of grants, if the respective social security institution is underfunded. An insured person is assigned to each social security institution. Only for health insurance, the insured is entitled to decide between public or private insurance.

### Health insurance:

One must choose between the public statutory health insurance and a personal private insurance. A change is possible, for example, if an employee exceeds a certain gross salary.

The health insurance laws require uniform contribution, which is 14.6% of gross wages or salary amounts. The contribution can vary depending on the financial capacity of the insured person. The contributions to private health insurance are calculated differently.

### Pension insurance:

The retirement pension should be insured with the statutory pension plan. In addition to the statutory retirement, the occupational and private pension plans assume increasingly important roles. The basis of the statutory pension insurance is the contract between generations, since the current premiums will be used for the current pensions. The contribution rate is 18.7% of gross wages.

Subject to compulsory insurance included in their statutory retirement funds are among others all persons who are in professional, dependent employment relationship or are in vocational training. Lifetime protection is offered against the reduction in earning capacity, age or death. The retirement age is 67 years. Unlike the other components of social security, the level of state pension depends on the amount of contributions.

### Unemployment insurance:

The statutory unemployment insurance exists to assist those unemployed who are searching for work. The contribution rate of the statutory unemployment insurance is 3% of gross wages or salary.

### Long-Term Care Insurance:

Long-term care insurance has played an important role since its introduction in 1995. People with physical, mental or emotional illnesses or disabilities are dependent on care, which is financed with long-term care insurance.

Based on the level of care, the long-term care insurance provides both pecuniary aid and non-cash benefits. The current contribution rate for long-term care insurance is 2.55%.

### Accident insurance:

Accidents at work or school as well as the commute to and from are included in the coverage of statutory accident insurance. In addition, the insurance covers work-related diseases.

Accident insurance is for insured employees' exempt from contributions; they have to be paid completely by the employer. The contribution amount is measured by the subsequent fulfilment of demand. At the end of the calendar year, the company has to allocate the expenses. The financial need, determined from the compensation of the insured and the risk classes of the different sectors, is then the basis used for calculation.

## Model calculation social security

	EMPLOYEE COMPENSATION		EMPLOYER COSTS
GROSS SALARY IN EUR	2,500		2,500
Deductions:			
Payroll tax	-261.00	(individual)	
Health insurance	-217.50	14.6% + 1.4% (only Employee)	182.50
Pension insurance	-233.75	18.7%	233.75
Unemployment insurance	-37.50	3%	37.50
Long term care insurance	-31,88	2.55%	31.88
Insolvency reallocation charge und reallocation charge "2" Accident insurance			15.75
Net wage in EUR	1,718.37		Costs 3,001.38

Assumptions: Tax class II, 2 children, married, rounded, Dated: 2017



### Cancelation provisions/protection against dismissal

Before employment is terminated, certain statutory notices must be observed. The length of notice depends on whether the employment is terminated by the employee or employer.

Employees are required to provide a four week notice (until the 15th or the last day of a calendar month). Divergent regulations require a contractual agreement. From the view of the employer, the notice period is determined by length of existing employment. After the probationary period, the notice period is one month and can be, depending on the duration of the employment, up to seven months (respectively at the end of a calendar month). The parties can reach a mutual agreement about a different notice period, but it may not be shorter than the legal time frame. Employees and employers in Germany are entitled to terminate the employment agreement. However, certain statutory limitations should be noted. Termination notices must be provided in writing. In some cases, the termination must be justified in writing. If a company has usually at least 11 employees, according to the Employment Protection Act (KSchG) reasons for termination may be:

- Personal-based dismissals
- Behaviour-based dismissals (must be preceded by a written warning)
- Operational dismissals

### Maternity Protection

Expecting mothers should inform their employer of their pregnancy at the earliest possible time. The statutory maternity leave begins six weeks before birth and ends eight weeks later. The employees can continue their employment during that time. The employees may revoke their consent to work at any time. During maternity leave, employees are entitled to receive remuneration. This amounts to the average earnings in the three months before pregnancy. The employer pays one part of the earnings and another part is paid by the statutory health insurance fund.

### Anti-discrimination

Germany is executing the anti-discrimination petition of the EU and its general equality principle. The anti-discrimination law (AGG) prohibits discrimination against persons with regard to ethnic origin, gender, religion, disability, age or sexual orientation.

### Works Council and Codetermination

If a company has at least five employees, they are entitled to elect a works council. The works council represents the in-house interests of employees. It provides information and consultation rights and in certain circumstances rights of codetermination in defined organisational and social affairs of the company.

### Unions

Unions represent the interests of workers. The agenda of unions includes demands for higher wages, better working conditions, reduction of working hours and more input in company decisions. During negotiations with employers' associations, unions keep their member's interest as a top priority. Unions are allowed to apply pressure by mobilising their members to perform peaceful demonstrations, such as strikes. However, Germany has significantly less strikes and work stoppages than other European countries. Unions are financed by contributions from its members and are protected by the German Constitution as a social coalition (Article 9 paragraph 3 GG).

## 9 FACTS ABOUT GERMANY

### The Federal Republic of Germany

- The Federal Republic of Germany is a federal nation consisting of 16 states.
- Geographical location: Central Europe
- Capital: Berlin
- Native language: German
- Parliament: Bundestag and Bundesrat
- 4 largest cities: Berlin (3.6 million inhabitants), Hamburg (1.8 million inhabitants), Munich (1.5 million inhabitants), and Cologne (1.1 million inhabitants)
- Time zone: Central European Time (CET)
- Country code: +49
- Internet TLD: .de

### Country Data

- Area: 357,021 sq. km
- Land: 349,223 sq. km
- Water: 7,798 sq. km
- Neighboring Countries: Denmark, Poland, The Czech Republic, Austria, Switzerland, France, Luxemburg, Belgium, Netherlands

### Climate

- Germany is located in a moderately cool climate zone. The prevailing winds from the west alter the weather on a daily basis.

### Terrain

- Germany is characterized by an ever-changing landscape from the flat low lands of the North, bordering the North Sea, to the foothills of the Alps in southern Germany.
- Elevation
- Lowest point: Neuendorf near Wilster -3.54m
- Highest point: Zugspitze 2,963 m
- Longest rivers inside Germany: Rhein 865 km, Elbe 700 km, Donau 647km

### Natural Resources

- Petroleum, natural gas, coal, brown coal, iron, copper, lead, zinc, silver, tungsten, salt, potassium, gypsum and timber.
- Germany has an array of natural resources. However, it imports more natural resources than it produces, because it is more profitable and efficient than extracting their own raw materials.

### Land Use

- Agricultural land: 53%
- Forested area: 29.8%
- Residential and trafficable area: 12.8%
- Water covered area: 2.3%
- Other areas: 2.1%

### Education

- The school system in Germany requires every child to attend both primary and secondary school.
- The general model separates the pupils based on their desired career and abilities. Pupils are separated before entering secondary school to "Gymnasium", "Realschule" or "Hauptschule".
- Upon completion of Gymnasium, the student is allowed to continue their studies at a University of choice.
- State funding runs public schools.
- Enrollment:
  - Public schools: 92.8%
  - Private schools: 7.2%
- 63.2% of German citizens have a secondary school certificate and 16.9% of people have a University degree.<sup>1</sup>

### Currency

- Unit of the European Union is the "Euro"
- Value of the Euro: 1 Euro = 1.11421 US Dollar as of (7/12/2017)<sup>2</sup>



## Demography

- Population: 82.6 million people (as 2016)
- Work force: 44.07 million people (as of 2017)<sup>3</sup>
- Life expectancy:
  - Male 78.2 years<sup>4</sup>
  - Female 83.1 years<sup>5</sup>
- Population growth: -0.7%<sup>6</sup>
- Religion: Catholic 31%, Protestant 30.8%, Muslim 3.9%, Undenominational 32.5%

## Gross Domestic Product/Economy

- The GDP is over 3,134.07 billion Euro (as of 2016)<sup>7</sup>
- The per capita gross national product is 37.997 Euro (as of 2016)<sup>8</sup>
- Portions of the GDP: Service: 68.9%, Industry and Construction: 30,5%, Agriculture: 0.6% (as of 2016)<sup>9</sup>
- Exports: 1.207,5 billion Euro (as of 2016)
- Imports: 954,6 billion Euro (as of 2016)<sup>10</sup>
- Primary receivers of exports: USA (8.9%), France (8.4%), GB (7.1%)<sup>11</sup>
- Primary providers of imports: China (9.8%), Netherlands (8.7%), France (6.9%)<sup>12</sup>
- Most important industries: Automotive Engineering, Mechanical Engineering, Electrical Engineering, Chemistry, Environmental Technology, Precision Engineering, Air and Space Technology and Logistics
- Foreign direct investment in Germany: 46.7 billion Euro (as of March 2017)<sup>13</sup>
- Modern Infrastructure: along with one of the most modern communication networks in the world, Germany has the most progressive road and railway system in Europe, with over 36,000 km of railway and 230,000km of highway.

<sup>1</sup> <https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/BildungForschungKultur/Bildungsstand/Aktuell.html>

<sup>2</sup> <https://www.onvista.de/devisen/Dollarkurs-Euro-Dollar-EUR-USD>

<sup>3</sup> <https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/Arbeitsmarkt/Arbeitsmarkt.html>

<sup>4</sup> <https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Bevoelkerung/Sterbefaelle/Sterbefaelle.html>

<sup>5</sup> <https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Bevoelkerung/Sterbefaelle/Sterbefaelle.html>

<sup>6</sup> [https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2017/01/PD17\\_033\\_12411.html](https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2017/01/PD17_033_12411.html)

<sup>7</sup> <https://www.destatis.de/DE/ZahlenFakten/Indikatoren/Konjunkturindikatoren/VolkswirtschaftlicheGesamtrechnungen/vgr111.html>

<sup>8</sup> <https://de.statista.com/statistik/daten/studie/1252/umfrage/entwicklung-des-bruttoinlandsprodukts-je-einwohner-seit-1991/>

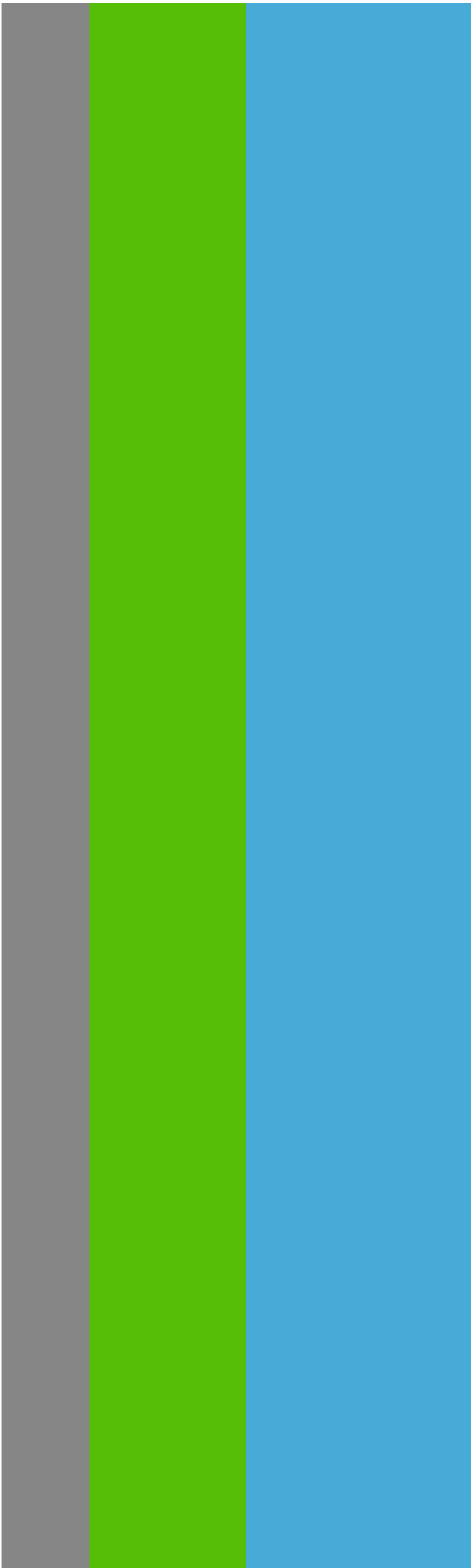
<sup>9</sup> <https://de.statista.com/statistik/daten/studie/36846/umfrage/anteil-der-wirtschaftsbereiche-am-bruttoinlandsprodukt/>

<sup>10</sup> [https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2017/02/PD17\\_045\\_51.html](https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2017/02/PD17_045_51.html)

<sup>11</sup> [https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/Aussenhandel/Tabellen/RangfolgeHandelspartner.pdf?\\_\\_blob=publicationFile](https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/Aussenhandel/Tabellen/RangfolgeHandelspartner.pdf?__blob=publicationFile)

<sup>12</sup> [https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/Aussenhandel/Tabellen/RangfolgeHandelspartner.pdf?\\_\\_blob=publicationFile](https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/Aussenhandel/Tabellen/RangfolgeHandelspartner.pdf?__blob=publicationFile)

<sup>13</sup> [https://www.bundesbank.de/Redaktion/DE/Downloads/Veroeffentlichungen/Monatsberichtsauftaetze/2017/2017\\_03\\_zahlungsbilanz.pdf?\\_\\_blob=publicationFile](https://www.bundesbank.de/Redaktion/DE/Downloads/Veroeffentlichungen/Monatsberichtsauftaetze/2017/2017_03_zahlungsbilanz.pdf?__blob=publicationFile)





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