



SETTING UP BUSINESS IN **GERMANY**



General Aspect

Germany is situated in the heart of Europe, bordering nine other countries. As it is part of the euro zone, its monetary unit is the Euro. With about 357,000 square kilometres Germany is one of the largest European countries. The total population is around 82.5 million people. The official language is German, but many people, especially in business life, speak English as well.

Legal Forms of Business Entities

Legal form	Feature	Remarks
Branch Office	Has no legal identity, but is part of the head office business and its organization. There are two kinds of branch offices: the autonomous branch office (Zweigniederlassung) and the dependent branch office (unselbständige Zweigstelle).	Suitable for foreign companies looking for a presence in Germany to initiate business or maintain contacts with business partners, especially in cases of uncertain success.
Sole Proprietorship	Set up by a single natural person, who is fully liable for the debts contracted by the firm with his own present and future wealth. An entry in the commercial register as a registered business person (eingetragener Kaufmann, e. K.) is necessary for merchants (a person who carries on a commercial business), no entry is necessary for freelance professionals (Freiberufler)	Suitable for small businesses and start-ups.
Partnerships	Any partnership requires at least two partners with a personal commitment. Their liability for the partnership's debts and liabilities is generally unlimited and personal, including all private assets.	No minimum share capital is required and the accounting and publication obligations are less extensive than those for corporations.

There are the following partnerships in German law:

Civil Law Partnership (Gesellschaft bürgerlichen Rechts – GbR)	An association of individuals or enterprises united in the achievement of a joint contractual purpose.	Appropriate for small or new companies. A written agreement is not necessary but recommended.
General Commercial Partnership (offene Handelsgesellschaft – OHG)	An association of at least 2 individuals, both of them fully liable for debts with their private assets. The company must be entered in the commercial register and registered with the local trade office.	Suitable company form for small and medium-sized businesses. The company transforms automatically into a General Commercial Partnership (OHG) when an entry in the Commercial register becomes obligatory due to its business volume.

Limited Partnership (Kommanditgesellschaft – KG)	A legal form related to the OHG, but with the option of limiting the liability of some of the partners. The general partner (Komplementaer) is personally liable without limitation, as well as with his private assets. The liability of the limited partners (Kommanditisten) is limited to their respective share of the partnership capital. The general partner can also be a limited liability company with 0% interest in the KG.	Suitable for medium-sized companies seeking additional start-up capital from persons who prefer a limitation of liability. The limitation of the limited partners' liability takes effect only when the registration of the KG and the subscribed partnership contribution has been entered in the commercial register.
Partnership Company (Partnerschaftsgesellschaft – PartG)	Only natural persons can be partners. The personal liability of the partners can be excluded with regard to professional errors for which one individual partner is alone responsible.	A legal form specifically designed for the joint exercising of professional freelance activities.

There are the following corporations in German law:

Limited Liability Company (Gesellschaft mit beschraenktter Haftung – GmbH)	In order to be valid the GmbH must be entered into the commercial register, with the signatures of all managing directors (Geschaeftsuehrer), who do not have to be shareholder. The minimum share capital of a GmbH is EUR 25,000. At the time of registration half of the minimum capital has to be verifiably contributed.	The most popular legal form for corporations, with high flexibility and relatively few obligations.
Public Limited Company (Aktiengesellschaft – AG)	The AG comes into existence upon registration in the commercial register, when the application has been signed by the founding shareholders, the members of the supervisory board (Aufsichtsrat) and the management board (Vorstand) in presence of a notary. The minimum share capital of an AG is EUR 50.000,00, which must be fully subscribed by the founding shareholders.	Shares can be transferred easily, the AG can be listed publicly on the stock exchange and enjoys a high market reputation. The costs of the founding process are relatively high. The organizational and accounting obligations and the publication requirements are very extensive.
Partnership limited by shares (Kommanditgesellschaft auf Aktien – KGaA)	At least one partner, the general partner, has to be liable for debts and liabilities of the company without limitation. The general partner can also be a corporation with limited liability. The KGaA can have an unlimited number of capital investors (limited shareholders), whose liability is limited on the capital contribution they subscribed.	The partnership limited by shares combines structures of a Public Limited Company and a limited partnership (KG).
Limited Liability Company – "mini-GmbH" (Unternehmergegesellschaft – UG)	In order to be valid the UG must be entered into the commercial register, with the signatures of all managing directors (Geschaeftsuehrer), who do not have to be shareholder or German resident. The minimum share capital of a UG is EUR 1,-. However, 25 % of the future annual profit must be set aside as reserve assets.	Suitable for small start-ups. However, if later transformation into GmbH is very likely, it might be favourable to start with GmbH as of beginning of the operations in order to avoid additional compliance costs.

Organizational Questions

Topic	Feature	Remarks
Commercial Register	<p>Companies of all legal forms must be entered in the commercial register (Handelsregister), except persons engaged in very small trade businesses (Kleingewerbetreibende), civil law partnerships (GbR), and freelance professionals (Freiberufler).</p> <p>The commercial register is administered in electronic form (www.handelsregister.de).</p>	<p>N.B.: If a company is legally required to be registered, but takes up business operations before being entered in the commercial register, the partners are personally liable for any losses up to the point of registration. This also applies for the GmbH shareholders, limited liability partners of a KG and for the AG shareholders.</p>
Trade Register Notification	<p>Registration with the local trade office (Gewerbeamt) is required for all legal business forms, except freelance professionals. After the trade register notification (Gewerbeanmeldung) the trade office forwards the registration to the tax authorities, the regional association of professional trading associations, and the chamber of industry and commerce or skilled crafts.</p>	<p>Chamber membership is automatic and mandatory. Sometimes a licence or an approval for the business registration is necessary.</p>
Bank Account	<p>To open a bank account individuals need a valid passport and a confirmation from the local Public Office (Buergeramt) stating that Germany is the current place of residence. Companies need an excerpt from the commercial register and the articles of association of the company.</p>	<p>Banks are required to check the identity of the depositor in order to prevent money laundering.</p>
Transfer of Goods and Machinery	<p>Within the EU goods and machinery can circulate freely. However, special income tax and VAT regulation need to be considered. Imports from non-EU states to Germany cause customs, import turnover tax, and in some cases special excise taxes.</p>	
Transfer of Capital	<p>Capital can be moved in and out of Germany without any restrictions.</p>	<p>However, amounts exceeding EUR 12.500,00 must be reported to the German Central Bank for statistical purposes only.</p>
Visa and Residence permit	<p>All EU citizens can set up business and take up self-employed work in Germany without the requirement of any permit. Most of the non-EU nationals need a visa to enter Germany, but there are several exceptions (see www.auswaertiges-amt.de).</p>	<p>In the time of setting up business a Schengen Travel Visa (Business Visa) may be sufficient, which enables its holder to stay in Germany for up to 3 months per half year. For a longer stay a residence permit is needed.</p>

Employment

Topic	Feature	Remarks
Work permit	Citizens of the European Union, the European Economic Area (= EEA), or Switzerland can work in Germany without any restrictions. Nationals from all other countries need a work permit to work legally in Germany, except members of the management board of corporations.	For the new eastern European countries may exist restrictions for non-self-employed workers for a transition period.
Labour law	In Germany there are detailed employment regulations. A minimum of 24 days of paid holiday is guaranteed. This amount is based on 6 working days per week and added to public holidays. Normal working hours are between 35 and 40 hours or 5 days per week. Statutory limits on working time are part of extensive health and safety regulations. The notice period for termination of employment depends on seniority of the employee. A special law for protection against unfair dismissal offers great protection for employees.	
Social system	The social security system consists of pension insurance (18,60% of gross salary), health insurance (about 14,60%), nursing care insurance (3,05% + 0,25% if childless) and unemployment insurance (2,5%). The social security contributions are shared roughly 50/50 by employer and employee. The accident insurance (about 2,0%) has to be paid by the employer in total.	For directors of limited companies and those who have a gross salary exceeding the yearly amount of EUR 54.450,00, exist exemptions or limitations of social security contributions. The maximum assessmentbasis for the social security is EUR 82.800 p.a. (West-Germany) and EUR 77.400 p.a. (East-Germany).



Taxation

Companies in Germany are usually taxed on two levels: On the first level, corporations are subject to corporate income tax (Körperschaftsteuer), whereas partnerships and sole proprietorships are subject to personal income tax (Einkommensteuer). Both taxes are levied by the federal government. On the second level, all business operations are subject to the trade tax (Gewerbesteuer), which is imposed by the municipalities, where the company is based.

Tax	Feature	Remarks
Corporate Income Tax (Körperschaftsteuer)	<p>The standard corporate income tax rate is 15% on all taxable earnings of the corporation, whether retained or distributed profits. Income from investment from companies with major interests (>15%) is 95% tax free. However, once profits are distributed to the shareholders, these must pay personal income tax or compensation tax (Abgeltungssteuer) on the dividends.</p>	
Trade Tax (Gewerbesteuer)	<p>Commercial business operations are subject to trade tax with regard to their taxable earnings (tax exempts exist for businesses with mere investment operations). The trade tax burden depends on the tax assessment rate (Gewerbesteuer-Messbetrag), which is 3.5%, and the trade tax collection rate (Gewerbesteuer-Hebesatz) levied by every municipality. The taxable earning, multiplied by the collection rate, gives the trade tax bases amount, which is multiplied by the applicable municipal collection rate.</p>	<p>By law, the municipal collection rate must be at least 200%, resulting in a minimum total trade tax burden of 7%. Frankfurt/Main and Munich have municipal collection rates of 460% and 490% respectively, the average rate is somewhere between 350% and 400%.</p>
Personal Income Tax (Einkommensteuer)	<p>The rate of personal income tax starts at 14% for an annual income exceeding the tax-free allowance of EUR 9.408,00. It rises progressively to a maximum personal income tax rate of 42%, which is applicable to earnings of EUR 57.051,00 or more. An increased tax rate of 45% applies to every euro in excess of EUR 270.500,00 per year. Special regulation exist for income from investment. If income stems from operations which are also subject to trade tax the trade tax can be almost fully offset against the income tax.</p>	<p>All Individuals who are resident in Germany or who have German income have to file a tax return annualy. Exemption exist for individuals with mere income from imployment.</p> <p>Tax bonuses are granted to persons which are married and/or have children. Various other tax incentives exist.</p> <p>Employees are subject to payroll tax (withholding tax).</p>
Personal Income Tax in case of partnerships	<p>As partnerships are not separate legal entities but associations of partners, the partners themselves generally are subject to the personal income tax, with the individual tax rate applicable to each shareholder. In order to achieve a tax burden neutrality between partnerships and corporations, the personal income tax rate applicable to retained earnings (thesaurierte Gewinne) of a partnership is limited to 28.25%. After distribution to the partners, the distributed earnings are subject to a subsequent taxation of 25%.</p>	

Withholding tax for income from investment	Income from investments is subject to a withholding tax with a tax rate of 25%.	For special groups of investments can be opted for partial taxation regime (only 60% taxation, „Teileinkünfteverfahren“). Special regimes also exist for income from investment in public funds. For individuals: If the individual income tax rate is less than 25%, the taxpayer can request that his individual tax rate has to be applied.
Solidarity Surcharge (Solidaritätszuschlag)	The solidarity surcharge, introduced to finance the German reunification, is 5.5% of the assessed amount of both corporate and personal income tax. No solidarity surcharge is levied on trade tax payments.	In case of withholding tax, the solidarity surcharge is also withheld together with the withholding tax. Currently, this tax is under review by the legislator. It is planned to abolish the solidarity surcharge for most of the taxes.
Value Added Tax (VAT) (Umsatzsteuer)	The VAT system is widely unified within the EU, even though many exemptions and national specialties still exist. The normal VAT rate is 19%, a lower rate of 7% is charged for convenience goods and services needed on a day-to-day basis, such as food, books and newspapers, or public transport. Some services, including banking, healthcare, and non-profit work, are VAT-exempt. For certain services rendered by a foreign entrepreneur, the reverse-charge-system has to be applied. Regularly, Input VAT is fully deductible from VAT.	Each entrepreneur can apply for a VAT-Identification-number, which is particularly necessary for intra-EU supplies and services. Import turnover tax (Einfuhrumsatzsteuer) has to be paid for goods imported from non-EU states.
Real Estate Transfer Tax (Grunderwerbsteuer)	When domestic real estate changes owner, a one-time real estate transfer tax of about 3.5% to 6.5% (depending on the federal state – “Bundesland”) of the purchase price has to be paid, usually by the buyer.	
Real Property Tax (Grundsteuer)	Every property owner in Germany is annually liable to real estate tax. The tax rate depends on the category of real estate, the assessed value of the property and the municipal collection rate (Hebesatz). However, the real estate tax has been declared unconstitutional and has to be revised by the end of 2019.	
Church Tax (Kirchensteuer)	Individuals who belong to a recognised church and who are subject to unlimited taxation in Germany must pay church tax (Kirchensteuer). Depending on the federal state of residence, the church tax rate is 8% or 9% of the individual's income tax. Church tax paid is deductible for income tax purposes.	
Non-resident Taxation	Non-resident individuals and companies in Germany receiving income generated in Germany, are subject to German limited taxation with their German-sourced income. Double taxation of this income is avoided by double taxation agreements between Germany and other countries. In case of a non-resident company the tax treatment depends on its kind of income. For individuals the deduction of expenses is only allowed if and to the extent these expenses are economically related to the taxable revenues. These limitations put taxpayers with a limited tax liability in Germany in a disadvantageous position compared with individuals who are subject to unlimited German taxation. However, individuals who are subject to limited taxation in Germany can apply for unlimited taxation if at least 90% of their worldwide income is subject to German taxation in one year.	


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