



ggi

BUSINESS SOLUTIONS
WORLDWIDE

Doing Business in Germany

A worldwide association of independent
auditing, accounting and consulting firms

Doing Business in Germany



Doing Business in Germany

1 Contents

1	Contents	1
2	Disclaimer	3
3	Introduction	4
4	Germany	5
4.1	Size and Population	5
4.2	Economy	5
4.3	Currency and banking system	6
4.4	Political system	7
4.5	Legal system	7
5	Forms of business enterprise	9
5.1	Sole proprietorship	9
5.2	Branches	9
5.3	Corporations	10
5.3.1	Limited Liability Company (GmbH)	10
5.3.2	Stock Corporation (AG)	11
5.3.3	Partnership Limited by Shares (KGaA).....	12
5.3.4	European Company	13
5.4	Partnership	14
5.4.1	Civil Law Partnership (GbR)	14
5.4.2	General Commercial Partnerships (oHG)	14
5.4.3	Limited Partnership (KG)	15
5.4.4	Corporate Partnership (GmbH & Co. KG)	15
5.4.5	Partnership Company (PartG)	16
5.5	European Economic Interest Grouping (EWIV)	16

6	Taxation of income	18
6.1	Income tax – individuals	18
6.1.1	Unlimited individual income tax	18
6.1.2	Limited individual income tax	19
6.2	Income tax – companies	20
6.2.1	Corporate Income Tax (Körperschaftsteuer)	20
6.2.2	Personal Income Tax for Partnerships (Einkommensteuer)	22
6.2.3	Trade Tax (Gewerbesteuer)	22
6.2.4	Holding companies	24
6.3	Withholding taxes	24
6.3.1	Dividends	24
6.3.2	Interest	25
6.3.3	Royalties	25
6.3.4	Wage Tax	25
7	Other forms of taxation	26
7.1	Sales tax/VAT (Umsatzsteuer)	26
7.2	Real Estate Transfer Tax	28
7.3	Inheritance and Gift Tax	28
7.4	Thin capitalisation rules	28
7.5	Transfer pricing	31
8	Labour relations and social security	32
8.1	Terms of Employment	32
8.2	Anti Discrimination Act	34
8.3	Termination of Employment	35
8.4	The German Social Security System	36
8.4.1	Health Insurance	36
8.4.2	Nursing Care Insurance	36
8.4.3	Pension Insurance	36
8.4.4	Unemployment Insurance	37
8.4.5	Accident Insurance	37
8.4.6	Work and residence permits	37
9	Quality of life	39
9.1	Education	39
9.2	Communication and transport	39
9.3	Social security benefits	40
	Offices	41
	Partners	42

2 Disclaimer

The information contained in this booklet is intended solely to provide general guidance on matters of interest for the personal use of the reader, who accepts full responsibility for its use.

While we have made every attempt to ensure the information contained in this booklet has been obtained from reliable sources, VOTUM AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft is not responsible for any errors or omissions.

Nothing herein shall to any extent substitute for the independent investigations and the sound technical and business judgement of the reader. Laws and regulations are continually changing, and can be interpreted only in the light of particular factual situations.

3 Introduction

This booklet presents an overview of matters to be considered by those contemplating investment in Germany. While it covers the relevant areas, it can, of course, not be exhaustive and it is emphasized that this booklet was not designed to provide the comprehensive and detailed information necessary to make investment decisions.

All information contained in this booklet is as of November 2008.

Frankfurt, November 04, 2008

Alexander Leoff
German Public Auditor
US-CPA

Lothar Stache
German Public Auditor
Tax Advisor

VOTUM AG

Wirtschaftsprüfungsgesellschaft · Steuerberatungsgesellschaft

Friedrichstraße 39 – 41 · 60323 Frankfurt/M. · Germany
Phone: +49 (0) 69 / 9 71 60 - 4 40
Fax: +49 (0) 69 / 9 71 60 - 4 44
e-Mail: kontakt@votum-net.de
www.votum-net.de

4 Germany

4.1 Size and Population

With an area of approx. 357,092 square kilometres and a population of approx. 82,2 million, Germany has the biggest population of all European countries. The population density of 231 inhabitants per square kilometres is close to the European average.

4.2 Economy

With annual sales of more than EUR 2 trillion in goods and services, Germany is the strongest economy in Europe and one of the largest worldwide. Accounting for 22% of the EU's GDP, it is also the engine driving Europe's economy. Germany's international competitive strengths are not coincidental but rather the result of sustained progress in the fields of education, research, and innovation. As an engine of technology in Europe, Germany is a leader in the filing of patents relevant to international markets and, measured according to population size, is number two worldwide in this category.

Germany's economy is founded upon the principle that the government, the population, and the private sector should work together to guarantee benefits and safety for all. Private enterprise is supported by laws that provide businesses with an effective protection of their rights. The government is opening more paths for creativity, innovation, and the smooth delivery of goods and services. This is accomplished by means of educational and employment reforms designed to meet economic demands as well as financial support for businesses.

Key economic indicators are:

Gross national income 2007:

EUR 2,446.78 billion

Gross domestic product (GDP) 2007:

EUR 2,423 billion

GDP growth 2007:

+2.5 %

GDP per inhabitant 2007:

EUR 29,455

Shares in the GDP:

Services 69.1 %, industry and construction 30,0 %, agriculture 0,9 %

Exports 2007:

EUR 1139 billion

Imports 2007:

EUR 970 billion

Major export goods:

Cars and car parts, machines, chemical products

4.3 Currency and banking system

The euro (currency sign: €; banking code: EUR) is the official currency of the European Union (EU), used in 15 member states known collectively as the Eurozone (Austria, Belgium, Cyprus, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain). It is also used in five further countries with formal agreements and six other countries without such agreements. Hence it is the single currency for over 320 million Europeans. Including areas using currencies pegged to the euro, the euro directly affects close to 500 million people worldwide. With more than EUR 610 billion in circulation as of December 2006 (equivalent to US\$802 billion at the exchange rates at the time), the euro is the currency with the highest combined value of cash in circulation in the world, having surpassed the U.S. dollar.

The euro was introduced to world financial markets as an accounting currency in 1999 and launched as physical coins and banknotes on 1 January 2002. It replaced the former European Currency Unit (ECU) at a ratio of 1:1.

The euro is managed and administered by the Frankfurt-based European Central Bank (ECB) and the Eurosystem (composed of the central banks of the euro zone countries). As an independent central bank, the ECB has sole authority to set monetary policy. The

Eurosystem participates in the printing, minting and distribution of notes and coins in all member states, and the operation of the Eurozone payment systems.

While all European Union (EU) member states are eligible to join if they comply with certain monetary requirements, not all EU members have chosen to adopt the currency. All nations that have joined the EU since the 1993 implementation of the Maastricht Treaty have pledged to adopt the euro in due course. Maastricht obliged current members to join the euro; however, the United Kingdom and Denmark negotiated exemptions from that requirement for themselves. Sweden turned down the euro in a 2003 referendum, and has circumvented the requirement to join the euro area by not meeting the membership criteria.

unlike the private banks, the savings banks and the cooperative banks do not seek - at least not formally - to maximise profits but to achieve a reasonable surplus and provide support to their members. All three banking groups rely on making profits to safeguard their existence in the long term, which is why profit earning, together with security and liquidity, (the so-called „magic triangle“ of banking policy), is their prime corporate objective.

The special feature of the German banking system compared with most other industrialised countries is the dominant position of universal banks. While they differ considerably in terms of legal form, ownership, size, administrative organisation and business structure, the great majority of credit institutions conduct every conceivable type of banking business under one roof. The commercial banks may be grouped into three broad categories:

- the private commercial banks numbering approximately 350 (the three big banks, the regional and other commercial banks, the private bankers and the branches of foreign banks), with a full 30% share of the aggregate business volume of all commercial banks;

- the 624 (as of September 1997)* public savings banks and their central banks (central giro institutions), with a share of almost 50%;

*(537 savings banks in January 2002)

- some 3,000 credit cooperatives (Volksbanken and Raiffeisenbanken) and their central banks, with a share of just under 20%.

Although the private commercial banks, the savings banks and the credit cooperatives all have different business priorities, there is no division of activities among them as such. Neither are there any significant differences regarding their operations in the market place,

even though, unlike the private banks, the savings banks and the cooperative banks do not seek - at least not formally - to maximise profits but to achieve a reasonable surplus and provide support to their members. All three banking groups rely on making profits to safeguard their existence in the long term, which is why profit earning, together with security and liquidity, (the so-called „magic triangle“ of banking policy), is their prime corporate objective.

4.4 Political system

The Federal Republic of Germany is a democratic, federal and social constitutional state. Together with the basic rights, these principles form the inviolable core of the constitution guarded over by the Federal Constitutional Court.

4.5 Legal system

The Federal Republic of Germany is a democratic constitutional state that guarantees stable laws, the protection of liberties, and equality before the law. This is essentially ensured by the Basic Law, as the principles of a democratic constitutional state are enshrined in the constitution. The German supreme court, namely the Federal Constitutional Court monitors maintenance of these rights and the preservation of justice.

In Germany, the administration of justice is divided into five branches: ordinary, labor, administrative, social and financial courts. In a normal case there are three higher tiers that can re-assess court decisions. The plaintiffs and the accused can appeal against a court ruling. Thereupon the litigation goes before a “higher” court and a ruling is handed down. Not until the third level has been reached is there no longer any right of appeal and the litigation thus comes to an end.

Justice is passed down by some 21,000 independent judges who are bound only to the law and are, as a rule, appointed for life. They may not on principle be removed from office. Moreover, there are some 5,000 public prosecutors in Germany and more than 100,000 lawyers.

In surveys on political and legal stability, foreign investors put Germany second only to Great Britain. This legal stability attracts foreign companies and is to the benefit of investments and entrepreneurial activity in Germany.

5 Forms of business enterprise

5.1 Sole proprietorship

Anyone who desires to start a business immediately may establish a sole proprietorship or sole trader (Einzelunternehmer).

This is the easiest way of forming a company because special formalities such as partnership agreement or minimum capital are not required. A sole proprietorship can only be established by one natural person and is suitable for small businesses and start-ups.

A sole proprietorship conducting trade must be registered with the local trade office. However, an entry in the commercial register as a registered business person, (eingetragener Kaufmann, e.K.) is only necessary if the conducted business requires a level of organisation that indicates the existence of a commercial enterprise.

Furthermore, a notification to the local Trade Office (Gewerbeamt) is required. Unless a specially regulated business is carried out, there are no further requirements for starting the business. In some industries special approvals and permissions are mandatory.

A sole trader is subject to special provisions of the German Commercial Code (Handelsgesetzbuch, HGB) with regard to inter alia the conduct of the business, legal representation

of the business, bookkeeping obligations, drawing up of financial statements and notification requirements.

5.2 Branches

Foreign companies not wishing to set up a new business vehicle or not yet sure about the sustainability of their engagement and commitment in Germany can simply carry on business directly and register a branch (Zweigniederlassung) with the commercial register and with a local trade office of the municipality where the branch office is to be located.

A branch has no separate legal entity status and, therefore, is regarded as an integral part of the foreign company. The choice between doing business in Germany through a branch or through a separate legal entity is mostly tax driven. Apart from tax considerations, a branch is the suitable business vehicle if the business will most likely have no substantial size and / or a long term commitment in Germany is not wanted or still uncertain. In case of sustainable medium to long term investments, the investor should normally set up an independent German company.

5.3 Corporations

5.3.1 Limited Liability Company (GmbH)

The German limited liability company (Gesellschaft mit beschränkter Haftung, GmbH) is the most popular legal form of corporation. It combines high flexibility with relatively few obligations. Additionally the formation procedure of a GmbH is fairly uncomplicated. It is designed for closely held businesses (no IPO possible) with a clear and stable shareholder structure looking for full liability protection of its shareholders. The articles of association of a GmbH can be easily adapted to the requirements of the shareholders. The GmbH is not subject to as many legislative regulations as on Stock Corporation (AG) or the European company (SE). As of 1.11.2008 a major reform bill (MoMiG) has come into force that has provided the GmbH act with substantial simplifications and presumably will enhance the popularity of this legal form.

Formation procedure

The GmbH is established by the founding shareholder(s) executing a deed of formation and articles of association (Gesellschaftsvertrag) before a notary. The notarial form is not required if the GmbH is a small GmbH with a maximum three shareholders and not more than one managing director. This simplified foundation requires the use of a model deed of formation to be found in the annex of the GmbH act (GmbHG).

Immediately after notarization of the deed of formation and the articles of association respectively after completion of the simplified foundation, but prior to the application with the commercial register, the company has to open a bank account. Cash contributions to the share capital must be deposited to this account prior to filing the application forms for registration.

In order to be valid, the GmbH must be entered into the commercial register. All managing directors have to sign the commercial register application in person before a notary. The notary certifies the signatures, informs the managing directors about their duties and files the application.

Only upon registration in the commercial register, the GmbH becomes a legal entity and acquires full legal capacity. A GmbH must than be also registered at the local trade office.

Share capital

To set up a GmbH, a minimum share capital of € 25,000.00 is required (this can also be made up of contribution in kind). At the time of registration, however, it is sufficient for half of the minimum capital, i.e. € 12,500.00, to have been actually and verifiable contributed. If the GmbH only has a single shareholder, this shareholder must provide security for any unpaid amount of the minimum share capital. For Start-ups and new businesses the recent reform bill (MoMiG)

has designed a form of GmbH (haftungsbeschränkte Unternehmergesellschaft) that will not require any minimum share capital provided that the company does not distribute any profits to the shareholders until the minimum capital of the “classic” GmbH has been accrued.

The GmbH is not required to issue share certificates or to maintain share register, book or ledger, or to keep other formal records of share ownership. The ownership of the shares is documented only in the incorporation deed and any later transfers will be documented in notarial transfer deeds.

Managing Directors

A GmbH is managed and legally represented by its managing directors (Geschäftsführer). The corporation must have at least one managing director, who does not have to be a shareholder or a German resident. By issuing binding instructions or directions to the managing directors, the shareholders may exercise direct influence on the GmbH management.

A managing director must manage the company’s business with the due care of a prudent business person. Additional specific obligation may be imposed by the articles of association or the service contract or in shareholders’ resolution. Further, the shareholders

can give binding instructions to the managing directors which they have to obey unconditionally unless the instructions are unlawful. Managing directors who are in breach of their duties are jointly and severally liable to the company for any damages sustained.

Place of business

The shareholders may expatriate the management and place of business of a GmbH permanently to another EU-member state.

5.3.2 Stock Corporation (AG)

Stock Corporation (Aktiengesellschaft, AG) is the German legal form which is comparable to public companies in Anglo-Saxon jurisdiction. The AG offers two main advantages:

- Shares can be transferred easily
- The AG can be listed publicly on the stock exchanges

Capital may therefore be raised from the public and extended without difficulty.

However, some closely held businesses have also adopted this corporate form due to the arguably higher market reputation of an AG and the fact that the management is not bound by the shareholders directions.

An AG is subject to extensive legislative regulations. Because most of the regulations constitute mandatory law, little flexibility exists to adopt the articles of association to specific shareholder requirements.

Another feature of an AG is the independence of a management board, with regard to managing the AG, as the members of the management board are appointed by the supervisory board (Aufsichtsrat) rather than by the shareholders. A supervisory board is mandatory for an AG.

Incorporation and registration

In principle, any person can establish an AG. The formation procedure of an AG is similar to that of a GmbH. In particular, it requires notarization of the articles of association and subscription for initial shares by its founding shareholder(s). The founding shareholder(s) appoint the first auditor and supervisory board, which appoints the first management board (Vorstand). The appointment of the first auditor and supervisory board must be notarized.

The founding shareholders must also prepare a formation report with the relevant details of the establishment of the AG. This report has to be scrutinized by the boards. The formation of the AG must be registered with the commercial register. The application for regist-

ration must be signed before a notary by all founding shareholders, as well as by the initial members of the management board and the supervisory board. Upon registration the AG exists as a separate legal entity

Share capital

An AG must have a minimum share capital of EUR 50,000.00, which must be fully subscribed by the founding shareholders. Shares must be issued either with a par value (Nennbetragsaktien) of at least EUR 1.00 per share or multiples thereof all without a par value (Stückaktien).

Transfer of shares

Shares in an AG are transferable with relative ease. Unlike the transfer of shares in a GmbH, a transfer of shares in an AG does not require the execution of a notarized transfer deed.

5.3.3 Partnership Limited by Shares (KGaA)

German company law also provides for a partnership limited by shares (KGaA - Kommanditgesellschaft auf Aktien). Although constituted as a partnership, the KGaA is legally treated as an AG for most purposes and its shares can be traded on the stock exchange as though they were shares in an AG.

The KGaA has at least one general partner with unlimited liability. The shares are issued to and held as investments by the limited partners who thus have a similar status as shareholders in an AG. All rights to manage the KGaA fall to the general partners, who therefore have, in this regard, the same position as the members of the Vorstand of an AG. The division of profits and losses between the general and the limited partners is a matter for the statutes of the KGaA.

The KGaA has a long tradition on the German corporate scene, although there are few examples currently in existence. It is, however, favoured by insurance companies.

There are also various other German corporate or semi-corporate legal forms, but these are all either highly specialised in nature or are otherwise unsuitable for foreign investors.

5.3.4 European Company

Since December 2004, the European Company (also called *Societas Europea*, or SE) can be used as a legal entity to set up business in Germany. The provisions that govern the SE in Germany are based on EU

regulations. The features of a SE in Germany are very similar to those of an AG. The SE must have a link to at least two member states of the European Union (EU). Therefore a mere German business operation cannot be conducted through a SE.

The SE must have a minimum capital of EUR 120,000. Unlike other German legal forms, the SE is entitled to relocate not only its principal place of management, but also its registered office to another state in the EU. Therefore the SE can easily transfer its registered office within the EU without dissolving the company in one Member State in order to form a new one in another Member State.

The major difference compared to the AG is, that the SE may choose to have a one-tier board system (Administration Board) instead of the otherwise mandatory two-tier board system (Management Board and Supervisory Board).

5.4 Partnership

5.4.1 Civil Law Partnership (GbR)

A civil law partnership (Gesellschaft bürgerlichen Rechts, GbR) is defined as an association of individuals or enterprises united in the achievement of a joint contractual purpose. It is often formed to launch a business idea in cooperation with others.

The GbR is considered a type of partnership because at least two partners must agree to establish the company. This form is suitable for small or new companies. The partners are jointly liable with their private assets for debts incurred by the company.

If a GbR conducts business, this business must be a non-trade business or a “small trade business” by law. Businesses with a commercial set-up are deemed to be commercial businesses and must be registered in the commercial register. For this reason, the GbR cannot be entered in the commercial register; as soon as a GbR is registered with the commercial register, it automatically becomes a general commercial partnership (Offene Handelsgesellschaft, oHG).

The GbR is established when the partnership agreement is concluded. A written partnership agreement is recommended, but

is not compulsory. If the GbR conducts trade in the form of a small trade business, it has to register with the local trade office. Other than that, there are no specific requirements or registration fees for establishing a civil law partnership.

5.4.2 General Commercial Partnerships (oHG)

The general commercial partnership (Offene Handelsgesellschaft, oHG) is the classic company form for small and medium-sized businesses. Its structure corresponds to the civil law partnership (GbR).

Every GbR that runs a commercial enterprise (a business enterprise of a type or size requiring business operations to be set up in a commercial manner) automatically qualifies as an oHG.

All partners are jointly and severally liable for the oHG's debts and liabilities. Accounting regulations for an oHG are also stricter than those for a GbR.

In order to establish an oHG, two or more partners must conclude a partnership agreement. It is advisable for the partnership agreement to be in writing.

The oHG must be entered in the commercial register and registered with the local trade office. The application to the commercial register must be made by all partners and be certified and filed by a notary.

5.4.3 Limited Partnership (KG)

The limited partnership (Kommanditgesellschaft, KG) is a legal form related to the oHG, but with the option of limiting the liability of some of the partners. This legal form is suitable for medium-sized companies seeking additional start-up capital, but wishing to limit individual responsibility.

A KG is established when a partnership agreement between two or more partners, including at least one limited and one unlimited partner, is concluded. It is advisable for the partnership agreement to be in writing.

In the KG, at least one partner, the so called general partner (Komplementär), is personally liable without limitation. The liability of the so called limited partners (Kommanditisten) is limited to their respective share of the partnership capital.

A KG must be entered in the commercial register and registered with the local trade office. The liability of the limited partner will only become limited once the registration of the KG and the subscribed partnership contribution has been entered in the com-

mercial register. The application to the commercial register must be made by all partners and be certified and filed by a notary.

The most important advantage of a KG over an oHG is the greater flexibility gained by increasing the capital base through the inclusion of additional limited partners.

5.4.4 Corporate Partnership (GmbH & Co. KG)

The GmbH & Co. KG is a limited partnership (KG) in which the general partner (Komplementär) is a limited liability company (GmbH). The GmbH is fully liable for the GmbH & Co. KG's debts and liabilities. The liability of the limited partners (Kommanditisten) is limited to their respective share of the partnership capital. This legal form is a very popular way of achieving the advantages of a partnership structure (advantageous tax treatment in some regards), but nonetheless shielding the partners from an unlimited personal liability risk as in a corporation by appointing a corporation (generally a GmbH) as a sole general partner of the KG. Usually the limited partner(s) also holds all shares in the GmbH which acts as the general partner. The result of this structure is that the limited partner(s) are not only holding all interest in the KG directly and indirectly via the GmbH but also controlling the partnership via their Shareholding of the GmbH, even though they are excluded from the management of the KG directly

5.4.5 Partnership Company (PartG)

The partnership company (Partnerschaftsgesellschaft, PartG) is a legal form specifically designed for the joint exercising of professional freelance activities; mere capital participations are therefore excluded. This form of company enables members of the same or different freelance professions to form a mutually profitable company.

The partnership company is effectively and flexibly tailored to the freelance professions. The personal liability of the partners can be excluded with regard to professional errors for which one individual partner is alone responsible.

A partnership company is formed by the conclusion of a written partnership agreement between at least two partners. Only natural persons can be partners of a partnership company. The partnership company is registered in a notarized form in the partnership register located at the local court.

5.5 European Economic Interest Grouping (EWIV)

The European Economic Interest Grouping, a rather unknown legal form for a company has been conceived after the example of the French company form called G.i.e. (groupement d'intérêt économique).

Legal basis for the EWIV is the EC Regu-

lation No. 2137/85 (31.7.1985). The German legislator adopted the EWIV in the EWIV-Ausführungsgesetz dated 14.4.1988.

The EWIV must be formed by a minimum of two members coming from two different European states. Members of a grouping can be closed companies, stock companies, free lancers like architects, tax consultants etc., self-employed persons, associations, public law corporate bodies and other legal bodies. The main condition is the activity within the EU.

The purpose of the EWIV is to facilitate or to develop the cooperation among its members; it supports the activities run by the members but shall not replace the members' own activities. According to art. 3 of the EC regulation the purpose of the grouping shall be „to improve and increase the results“ of the members' activities. The purpose of the grouping is not to make profits for itself.

The EWIV has legal status and therefore may have obligations and rights of any kind. It can conclude a contract or accomplish any legal act, it can sue and be sued. It can be formed with or without assets, cash or material contribution. The members of the EWIV are jointly and without limitation liable for its debts.

The formation of an EWIV is simple. It requires a written contract. The minimum contents of the contract are:

- the name of the EWIV,
- the official address of the EWIV,
- the object of the EWIV,
- information about each member (name, company name, legal form, permanent address, number and place of registration if any),
- duration of the EWIV, except where it is indefinite.

The signatures of the founders or of the managing director(s) have to be authenticated by a notary and the EWIV has to be registered with the responsible commercial register.

The EWIV pays value added tax (V.A:T.) and employment taxes. It does not pay any company taxes, such as corporation tax or, e. g. in Germany, taxes on trade earnings. Profits resulting from the activities of an EWIV shall be taxable only with its members.

6 Taxation of income

6.1 Income tax – individuals

6.1.1 Unlimited individual income tax

All resident individuals (natural persons) are taxed on their worldwide income. Generally, individuals are deemed to be resident if they are physically present in Germany for more than six months in any one calendar year or for a consecutive period of six months over a year-end. Persons with their permanent and habitual abode in Germany will not lose their tax residence simply because they happen to be travelling for longer than six months. Non-resident individuals are taxed (usually by withholding) on their German-source income only.

Contrary provisions in double taxation treaties override German national law unless the latter is more favourable (from the German tax point of view only) to the taxpayer. However, German law contains a number of provisions to prevent what the authorities see as treaty-abuse, such as those making treaty relief conditional on taxation in the other state. Germany has double taxation treaties with 88 states for income tax purposes to avoid double taxation, when individuals have earned income in Germany as well as in another countries. Income from

other countries is either exempt from taxation in Germany or the income tax paid in the other state is allowed as a credit against German income tax.

Nationality is not of itself a criterion for determining residence or tax liability, although it may give an indication in (unusual) cases of doubt where a taxpayer has ties of equal strength to at least two countries.

All earnings from the following sources are subject to personal income tax:

- Non-self-employed work (dependent work)
- Self-employed work
- Business operations
- Capital assets
- Rents and leases
- Income from agricultural and forestry work
- Other earnings (e.g. from speculative profit)

The taxable income consists of the sum of all earnings after admissible deductions, such as expenses for private pension insurances.

The personal income tax rate progresses linearly from the lowest tax rate of 15% up to the current maximum rate of 42%:

- An allowance EUR 7,664 personal income per year is exempt from personal income tax. The first euro above this amount is taxed at 15%.
- The tax rate then increases progressively up to the maximum rate of 42%, which is applicable to taxable earnings of EUR 52,152 or more.

An additional charge of 3% applies to taxable income exceeding EUR 250,000 (EUR 500,000 for married couples). Accordingly, every euro exceeding EUR 250,000 is liable to a personal income tax of 45%.

The solidarity surcharge, introduced in 1995 to finance German reunification, is 5.5% on the assessed amount of both personal and corporate income taxes. Accordingly, the solidarity surcharge is 5.5% of a person's personal income tax rate. In the case of an individual income tax rate of 30%, the combined personal income tax + solidarity surcharge burden would equal 31.65%.

Residents in Germany who have chosen to officially register themselves as members of the Roman Catholic or Protestant-Lutheran churches are liable to church tax. Church tax is not a sub-category of personal income

tax. However, the amount of church tax depends on the personal income tax liability.

Depending on the federal state, church tax amounts to between 8% and 9% of an individual's personal income tax burden. Church tax is collected by the tax authorities and distributed among the churches.

Secular persons or members of other religious affiliations are not liable to pay a church tax.

6.1.2 Limited individual income tax

If an individual is not a German resident for tax purposes, he is subject to limited income tax liability with his income earned in Germany. Depending on the kind of income it can either be subject to withholding tax or progressive individual income tax rates from 25 to 45%.

German income can be earned for example from a permanent establishment, which is defined as a fixed place of business from where business activities are performed. Mere auxiliary activities e.g. storage or procurement of goods do not establish a permanent establishment.

In contrast a dependent agent or representative, who is authorized to conclude contracts in the name of the foreign trader, establishes a permanent establishment

6.2 Income tax – companies

German corporations and foreign corporations that are tax residents in Germany are subject to German corporate income tax, plus solidarity surcharge on their worldwide income. A corporation is tax resident in Germany, if it has its legal seat in Germany or if it is effectively managed and controlled in Germany.

Corporations in Germany are usually taxed on two levels:

On the first level, corporations – such as the stock corporation (AG) and limited liability company (GmbH) – 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 – corporations, partnerships and sole proprietorships alike – are subject to the trade tax (Gewerbesteuer), which is imposed by municipalities, i.e. the town or city where the company is based.

6.2.1 Corporate Income Tax (Körperschaftsteuer)

Taxable income

Taxable income is derived from the statutory accounts drawn up in accordance with the provisions of the Commercial Code. In principle, all income is taxable except for dividends and capital gains on the sale of shares. In both cases, the exemption applies regardless of the amount of the investment or of the length of time for which the shares were held and it also applies equally to German and foreign investments. The non-deductible directly related costs of earning this tax-free income is presumed to be 5% of the dividend received or capital gain realised.

German law describes the statutory financial statements as being „decisive“ for the determination of taxable income. This does not mean that the tax authorities are obliged to base the corporation and trade tax assessments on the profit before taxation as shown in the financial statements, but rather that no expense, even if otherwise allowable, may be deducted from taxable income, unless it has also been taken up in the financial statements.

Thus, for example, depreciation of fixed assets taken in the books in excess of that amount allowable under the relevant provisions of the Income Tax Act will be added back in the tax returns, while a company showing depreciation expense in its profit and loss account of less than that which could have been claimed under the tax rules, will have to base its taxable income on the lesser amount of the expense actually shown.

Companies accounting under IFRS are required to adjust their financial statements to reflect German accounting principles as the basis for their tax returns. The same adjusted statements are also the basis for the dividend resolution.

Corporate income tax rate

The standard corporate income tax (Körperschaftsteuer) rate is 15% on all taxable earnings of the corporation. This tax applies to both retained and distributed profits.

However, once profits are distributed to shareholders, the shareholders must, in turn, pay personal income tax on these profits (i.e. dividends).

The solidarity surcharge was introduced in 1995 to finance the German reunification. The surcharge is 5.5% of the assessed

amount of both corporate and personal income taxes.

Accordingly, the solidarity surcharge is 5.5% of the 15% corporate income tax, adding up to a combined corporate income tax + solidarity surcharge burden of 15.825%.

Limited corporate income tax

Non resident corporations receiving income from a permanent establishment in Germany are subject to limited corporate income tax with their income received in Germany.

A permanent establishment is defined as a fixed place of business from where business activities are performed. Mere auxiliary activities e.g. storage or procurement of goods do not establish a permanent establishment. In contrast a dependent agent or representative, who is authorized to conclude contracts in the name of the foreign company, establishes a permanent establishment.

Tax rates

Income received from a German permanent establishment by a foreign corporation is subject to corporate income tax at a rate of 15% plus solidarity surcharge.

Non residents are also subject to trade tax (q.v. 6.2.3 Trade Tax)

Compensation Tax (Abgeltungssteuer)

Other amendments relating to corporate taxation include the abolishment of the previously applicable “half-income system” with respect to private capital gains in favour of a new compensation tax:

Under the current “half-income system,” only 50% of all dividends and speculation gains were subject to personal income tax at the shareholders individual income tax rate.

Under the reformed law, 100% of all dividends and speculation gains will be subject to a new 25% compensation tax. Shareholders with an individual personal income tax rate of less than 25% can request that their individual tax rate to be applied.

The compensation tax will become effective in 2009.

6.2.2 Personal Income Tax for Partnerships (Einkommensteuer)

Partnerships – such as oHG, KG, GbR, partnership company – and sole proprietorships are not separate legal entities but associations of partners, with the partners themselves generally being subject to all rights and obligations. Income derived by a partnership is allocated to its partners, and each partner is subject to personal income tax, plus solidarity surcharge on the partner’s proportion

of income at the partner’s individual tax rate, regardless of whether the income is retained in the partnership or withdrawn by the partners.

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 now limited to 29.8% – 28.25% plus solidarity surcharge. After offsetting personal income tax against trade tax payments, retained earnings of a partnership will therefore be subject to an average tax burden similar to that of a corporation under the corporate income tax.

After distribution to the partners, the distributed earnings are subject to a subsequent taxation of 25%, provided and insofar as the annual balance between a partner’s capital contributions and withdrawals exceeds the annual profits of the company or the partner’s share in the company (“excess withdrawals”). The overall tax burden on distributed earnings would therefore add up to approximately 47.7%, corresponding to the distributed dividends of the corporation.

6.2.3 Trade Tax (Gewerbsteuer)

All commercial business operations in Germany – defined as all independent activities aimed at generating profits over the long term, irrespective of the legal form – are subject to trade tax (Gewerbsteuer) with regard to their taxable earnings.

Independent freelancers such as doctors, architects, lawyers, or artists are not deemed commercial business operations and therefore are exempt from the trade tax.

The basis of assessment is the taxable income. This basis is determined centrally by the tax office responsible for the company's German taxation (the place of German management). The tax office then allocates this over the various local authorities where the company has business establishments, generally in proportion to the total wages paid to the employees in each. Special rules apply to German permanent establishments without employees, such as pipelines passing through Germany, but operated and controlled from abroad. Each local authority then issues its own notice of assessment to the taxpayer, that is, it charges its share of the overall basis of assessment to trade tax at its own local rate. Each local authority is also responsible for collecting its own trade tax.

Because the assessment rate for trade tax is determined by the municipalities, tax rates vary from municipality to municipality and therefore depend on where the business is located. Trade tax rates of larger towns generally fall within the range of 14.5-17%. Those of smaller towns and country districts are usually between 12% and 16%, although there are a few isolated instances of local authorities with rates of lower than 12%. The legal minimum rate is 7%.

Reform of Company Taxation

The tax assessment rate has been reduced from a previous 5% to 3.5%.

Moreover, the option to offset trade tax payments against personal income tax will be improved considerably. Previously, partnerships and sole proprietorships could offset trade tax payments against their personal income tax burden with a weighting factor of 1.8.

Under the reform of company taxation, this weighting factor has been more than doubled to 3.8.

Accordingly, the personal income tax of a partnership or sole proprietorship can be reduced by 3.8 times the trade tax base amount.

Another change pertains to the addition of interest payments and financial commitments to the trade tax assessment basis. Until 2007, only the total interest payments on long-term debts were added. From 2008, a fractional amount of all interest payments and financial commitments is added, thus rendering the hitherto requisite and often difficult differentiation between short-term and long-term liabilities obsolete. As a rule, 25% of all interest payments and financial commitments are added to the trade tax assessment basis under the new system; rent, lease, or license fees will be considered at a lower fractional amount.

6.2.4 Holding companies

Holding companies located in Germany are subject to unlimited corporate income tax and trade tax.

Dividends received from a German or foreign corporation and capital gains gained from the sale of shares in a German or foreign corporation are generally exempt from corporate income tax. 5 per cent of the tax-exempt dividend or capital gains are treated as non-deductible expenses whereas actual expenses incurred in connection with the shareholding are fully deductible.

Income derived from permanent establishments located in treaty countries is exempt from corporate income tax under most German tax treaties. Tax credits are available for income from permanent establishments in non-treaty countries.

6.3 Withholding taxes

Germany has an extensive system of withholding taxes deducted in order to secure the tax revenue. The most important of these is the income tax deducted from employees salaries (the so-called „wage tax“), followed by withholding taxes of 20% from dividends, of 30% from interest paid domestically and of 15% from payments to builders. The wages and other withholding

taxes are uplifted by a „solidarity surcharge“ of 5.5%.

These domestic withholding taxes are not final burdens, unless the taxpayer does not file a tax return. Any resident taxpayer may file a tax return; those whose only income is from a single employment are not obliged to do so.

Although dividends received from a German corporation are generally exempt from corporate income tax, the distributing company has to deduct 20% (2009: 25%) withholding tax plus 5,5% solidarity surcharge.

On application the withholding tax can be reduced to zero if the corporate shareholder is located in the EU and holds at least 15% (10% depending on the applicable double taxation treaty).

For non EU shareholders the double taxation agreements provide reductions of withholding tax from 5% to 15% if certain holding requirements are fulfilled.

6.3.1 Dividends

Dividends distributed by a German corporation are subject to withholding tax at a rate of 20 % (plus 5.5 % solidarity surcharge). Where distributions are made to EU corporate shareholders the withholding tax is,

upon application, reduced to 0 if the EU entity directly has held at least 25 % of the share capital of the German corporation for an uninterrupted period of at least 12 months at the time of the dividend distribution. For distribution to foreign non-EU shareholders, the double tax treaties with the respective countries provide for withholding tax reductions to 5 %, 10 % or 15 % if certain holding requirements are full filled

6.3.2 Interest

Withholding tax of 25 % (plus 5.5 % solidarity surcharge) is levied on interest from profit participating loans and from silent participations.

Interest payments made on fixed interest bearing loans, on bonds and on other interest bearing securities are subject to withholding tax at 30 % (plus 5.5 % solidarity surcharge) if made by banks or financial institutions.

Interest payments made by a German corporation on a fixed interest-bearing loan from its German or foreign shareholders are not generally subject to withholding taxes.

6.3.3 Royalties

Royalties, e.g. for the use of patents, know-how and other intellectual property rights, are only subject to withholding taxes if paid to a non-resident. The withholding tax

rate amounts to 20 % (plus 5.5 % solidarity surcharge).

6.3.4 Wage Tax

Employers are responsible for withholding wage taxes (plus 5.5 % solidarity surcharge) from wages and salaries paid to employees.

7 Other forms of taxation

7.1 Sales tax/VAT (Umsatzsteuer)

Value Added Tax (VAT) is currently levied on the supply of goods and services in Germany at a rate of 19% which is just under the European average. A lower rate of 7% is charged for convenience goods and services needed on a day-to-day basis, such as food, newspapers, or public transport.

Some services – including banking, health-care, and non-profit work – are VAT-exempt.

The official German term for VAT is Umsatzsteuer, but it was originally called Mehrwertsteuer and is still often referred to by this name.

Any entrepreneur supplying goods or services in Germany is liable for VAT, regardless of legal form and nationality. The German VAT system is designed so that VAT is not borne by the selling company, but paid by the end user of a product or service. VAT charged to an entrepreneur for goods supplied or services rendered by another entrepreneur may, therefore, be claimed as input VAT, with some restrictions.

The entrepreneur has to file quarterly or, if VAT due in the previous year exceeded EUR 6,136.00 monthly preliminary VAT returns, as well as annual VAT returns.

Procedure

Companies must add VAT to their prices. Assuming the net sales price of a good or service is EUR 15,000, the entrepreneur must demand an extra 19%, or EUR 2,850, from the buyer. The gross price for the customer is therefore EUR 17,850. The entrepreneur transfers the VAT received to the tax authorities on a monthly, quarterly, or annual basis. The period depends on the level of company turnover.

SMEs – Imputed Taxation and Taxation of Actual Value

An important ruling for small and medium-sized companies is the option of actual receipts taxation (Istbesteuerung). Under the normal method of imputed taxation (Sollbesteuerung), VAT is due as soon as goods or services are billed, irrespective of the time of actual payment. However, German law provides an exception to ensure that companies do not experience cash flow problems as a result. A company can apply for VAT to be calculated by the actual receipts taxation method for a turnover of up to EUR 250,000, rather than the imputed taxation method. In this case, smaller companies do not need to forward the VAT to the tax authority until the payments have actually been received. In states in eastern Germany, the ceiling will be EUR 500,000 until the end of 2009.

VAT in the European Single Market

Trade within the EU is free from customs and other restrictions.

However, a few rulings must be kept in mind with regard to VAT. When goods or services are sold to private consumers in other member states, the VAT for a delivery from Germany is included on the invoice in the same manner as for deliveries in Germany, and is collected and transferred to the tax authority.

The foreign consumer therefore pays the German supplier the price including VAT, and the vendor then transfers the VAT to the German tax authority. In the case of imports from countries that also charge VAT, however, no German VAT needs to be paid. The German consumer only pays the purchase price including (foreign) VAT to the foreign importer, who then pays the VAT in the home country.

VAT identification numbers exist to enable the tax authorities to retain an overview of the traffic of goods across borders. This number indicates that European companies are liable to VAT.

Import Turnover Tax (Einfuhrumsatzsteuer)

Goods imported from non-EU states are liable to import VAT.

The import VAT (Einfuhrumsatzsteuer) rate is 19% and is paid to the customs authority.

However, the Import Turnover Tax on goods imported from non-EU states can be deducted as input tax (Vorsteuer) by the tax authority if the company resells the goods. As a prerequisite, the company must have the necessary import documents with customs proof of payment (the import declaration). Exports are exempt from VAT.

No Import VAT on Intra-Community Shipments

Goods sold directly from a Germany-based company to a commercial customer in another EU member state in the course of commercial trade are exempt from import VAT. However, the recipient entrepreneur in the EU member state of destination is subject to acquisition tax with regard to the received intra-Community shipment. The acquisition tax rate – like import VAT – amounts to 19% / 7%, but in contrast to import VAT it is the recipient entrepreneur who has to declare these acquisitions to the tax authorities in the advance VAT return (Umsatzsteuer-Voranmeldung).

Like all other input VAT, the tax-paying entrepreneur can directly deduct the paid acquisition tax in the advance VAT return.

7.2 Real Estate Transfer Tax

The Real Estate Transfer Tax (Grunderwerbssteuer) can be an important factor for consideration when restructuring corporate groups with German subsidiaries or with German intermediary holding companies. This tax is levied on the sale and transfer of real estate located in Germany and on certain other transactions deemed to be a transfer of real estate, such as the transfer of at least 95% of the shares in a company owning real estate or the complete or almost complete change of partners in a partnership owning real estate.

Unfortunately, these rules apply regardless of the business background of the share transfer. They apply equally to the straight sale of the shares in a real estate owning company at market value to an outside third party as to otherwise tax-free dropdowns, mergers or other forms of corporate reconstruction within a closely related group of companies, whether for consideration or not. They also apply to the transfer of shares indirectly held, that is, to share transfers of an ultimate or intermediary holding company outside Germany that owns the shares in another German or foreign holding company owning in turn the shares of another company owning the German site. Thus, a corporate reorganisation or merger agreed

and implemented at a level far above that of the German subsidiary will trigger the liability to this German tax, even though there may well be no perception within the corporation of the reorganisation as a German taxable event.

The tax rate amounts to 3,5%. The basis for this tax is the consideration paid for the real estate, in certain situations, a special assessed tax value of the real estate.

7.3 Inheritance and Gift Tax

Inheritance and Gift Tax is levied on the transfer of property by gift or by inheritance. Monetary assets are valued at their face value; non-monetary assets are valued on specific formulae. The rates vary between 7% and 50% depending on the amount of the transfer and the degree of family relation.

Smaller gifts or inheritances are exempted from tax altogether by deducting „general allowances“ from the value of the assets transferred.

7.4 Thin capitalisation rules

Germany put thin-capitalization rules into which conform to the requirements of European law. In July 2004 the German tax authorities released final regulations addressing selected aspects of the new rules.

The thin capitalization rules were extended to apply to all loans granted to a corporation subject to unlimited or limited German tax liability by Germans or foreign shareholders owning directly or indirectly at least 25% of the share capital of the borrowing company, by persons related to these shareholders or by third parties who can take recourse to a shareholder or to a person related to a shareholder.

If a loan received by a corporation from a substantial shareholder or a related party exceeds a 1.5:1 debt-to-equity safe haven or violates other restrictions, the debtor corporation is denied a deduction for its interest expense, which is reclassified as a constructive dividend. Whether the interest income corresponding to the interest payments is subject to tax in Germany is irrelevant. The constructive dividend is subject to dividend withholding tax and taxable to the shareholder. However, if the shareholder is itself a German corporation, the dividend received is 95% tax exempt in its hands. The withholding tax on the dividend is fully creditable.

Loans between affiliated corporations

Inter-company loans between two German subsidiaries of the same corporate parent trigger constructive dividends from the bor-

rower to its parent.

At the level of the German parent company, 5% of the constructive dividend is effectively subject to tax unless the loan receiving subsidiary is consolidated under its parent for German tax purposes (Organschaft). The parent company is deemed to have re-contributed the constructive dividend to the loan lending subsidiary, which is treated as having received a non-taxable contribution in lieu of taxable interest income for German corporate income tax purposes.

Consequently, in a German domestic scenario involving companies only, inter-company loans between these affiliates are (almost) tax-neutral.

In a German group, this leads to a 5% tax on the dividend at multiple levels (the cascade effect), thus increasing the tax cost if the respective German entities are not consolidated for German tax purposes (Organschaft).

Guaranteed bank loans

The thin-capitalization rules apply to loans from unrelated lenders (banks for example) that have recourse against a party related to the borrower in the event the borrower defaults.

However, the final regulations in effect waive application of the rules unless:

- the substantial shareholder/related party of the borrower has long-term funds on deposit with the lending bank (or any other person); and
- a relationship exists between such deposits and the bank's loan to the borrower.

In essence, the tax authorities propose to apply the thin-capitalization rules to third-party loans only where some sort of back-to-back financing exists and the deposits are not merely short-term in nature.

In such situations, the interest paid by the borrowing corporation is reclassified as a constructive dividend and deemed to be paid to the appropriate substantial shareholder(s) to the extent of the interest earned on the related deposit with the lending bank. The final regulations require the debtor corporation to prove the non-existence of detrimental financing arrangements, but suggest that a letter from the lending bank may suffice. It is unclear how specific such a letter must be.

Inter-company loans to foreign corporations

The German thin-capitalization rules apply to loans to foreign corporations, thus potentially converting the lender's taxable inte-

rest income into largely tax-exempt dividend income. However, the final regulations assert that this is only the case to the extent that the interest paid by the foreign corporation is not tax deductible in the respective foreign jurisdiction. The German taxpayer has the burden of proof.

Holding companies

Holding companies are not required to deduct the book values of their shares in their subsidiaries for purposes of calculating their safe haven. However, direct and indirect subsidiaries of a holding company enjoy a safe haven only on loans from the holding company itself. Interest on loans to direct and indirect subsidiaries from any related party other than the holding company is reclassified as a constructive dividend (unless the borrower can pass the arm's-length test).

The tax authorities take the position that generally only one holding company exists within the same multi-tier group. Foreign companies can qualify as holding companies, but only if they derive income that is subject to tax in Germany.

7.5 Transfer pricing

Germany has extensive related party transfer pricing rules. Indeed, transfer pricing issues are almost always one of the most important components of tax audits of German subsidiaries of multinational groups. The German transfer pricing rules are substantially in accordance with the OECD reports and recommendations on the subject, although they are more detailed and more specific. Inter-company pricing between affiliated companies must be on an arm's length basis to be accepted for tax purposes. To demonstrate this, it is necessary that all important overall relationships and each charge for services (anything other than the delivery of goods) be covered by a prior written agreement.

Inter-company is especially vigorously pursued by the German tax authorities where multinational groups are involved. Charges for goods and services to a German company (and vice versa) that are not on an arm's length principle will be adjusted and increase the basis for taxation. In addition there are documentation requirements for transfer prices with affiliated companies. According this the taxpayer is obliged to record the types and contents of its cross-border transactions with related parties and to provide

information on the economic and legal background of inter-company transactions for the determination of arm's length transfer prices. If such documentation cannot be provided the tax authorities can make income adjustments on estimates and penalties can be imposed.

8 Labour relations and social security

8.1 Terms of Employment

Employment contracts do not have to be in writing to be valid. However, an employer must provide in writing the essential provisions of an employment relationship within one month after concluding a contract. This document must include the

- name and address of the parties,
- date of commencement,
- job description,
- place of work,
- salary including any additional payment,
- working hours and
- vacation entitlement

The parties may agree on a probationary period which ranges usually from three to six months. During this period the employment agreement can be terminated without reason at short notice, which must be at least two weeks.

Remuneration

For most professions, German law does not prescribe a statutory minimum wage.

Only a few industry sectors, predominantly the building industry and some related industries have introduced minimum wages by declaring generally binding the applicable collective wage agreements:

- Main construction trade (EUR 8.40 to EUR 12.40 per hour)
- Roofing/tiling (EUR 10.00 per hour)
- Painting and varnishing (EUR 7.15 to EUR 10.73 per hour)
- Demolition work (EUR 8.80 to EUR 11.60 per hour)
- Building cleaners (EUR 6.36 to EUR 7.87 per hour)
- Electricians (EUR 7.70 per hour for eastern Germany and EUR 9.20 per hour in western Germany)

Equal Payment

Equal pay legislation ensures equal payment for men and women.

Night Work

Night work is usually compensated, but there are no common standards. In the absence of collective labour agreements, night work is compensated by either additional paid holidays, or night work premiums on the gross wage.

Christmas Bonus (Weihnachtsgeld)

A Christmas bonus, or thirteenth monthly wage, is customary in Germany. In some cases, it has been legally determined by a collective wage agreement or other agreement.

Working Hours

Employees are allowed to work 48 hours per week (or 8 hours / 6 days).

A total of 60 hours per week (or 10 hours / 6 days) is possible if the 6 month average does not exceed 8 hours per day. A work day of over 10 hours may be agreed upon by collective labour agreements for certain sectors in which work time frequently and to a significant amount consists of on-call duty.

As a rule, employees are not allowed to work on Sundays and public holidays. However, exceptions exist for quite a few industries. At least 15 Sundays per year must remain work-free, though a smaller number can be agreed upon by collective labour agreement

for certain professions.

Vacation and Public Holidays

Full-time employees working 6 days per week are entitled to a minimum of 24 paid vacation days (the equivalent of 4 weeks) per year; accordingly, full-time employees working 5 days per week are entitled to a minimum of 20 days per year.

While working for less than six months within 1 calendar year, the employee is entitled to a pro-rated period of paid vacation. During the common 6-month trial period at the beginning of a new employment contract, employees are usually not entitled to take any vacation days.

The number of public holidays varies from state to state in Germany.

Sick Leave

Employees are obligated to inform their employer about any sickness requiring an absence from work and the expected duration of this absence as soon as possible (generally on the first day of the sick leave). If sick leave exceeds three days, employees are obligated to have a medical doctor provide proof of their incapacity to work. Notwithstanding this employers may request medical certification of an employee's incapacity to work beginning on the first day of the sick leave.

Employees are entitled to sick pay amounting to 100% of the normal salary until the time of recovery, though limited to a maximum of 6 weeks. Sick pay can be denied until the employee presents a medical certification of illness from a doctor. An employee is not entitled to sick pay during the first four weeks of employment, or if the employee has caused the incapacity to work by his or her own misbehavior.

Maternity

Female employees enjoy special protection during pregnancy and after birth from

- dismissal,
- health hazards for mother and child and
- temporary income reductions.

The employee should inform her employer of any pregnancy and the expected birth date as early as possible.

The maternity protection period starts six weeks before the expected birth date and ends eight weeks after birth. Only if a doctor certifies that the work will not be harmful to the health of the mother and child are pregnant employees allowed to work:

- Overtime
- Nights

- On Sundays
- On public holidays
- During the last six weeks before birth
- During the eight weeks after birth

In cases of premature or multiple births the employee is not obligated to return to work for up to 12 weeks after birth without having to provide proof of medical necessity for this extended absence.

8.2 Anti Discrimination Act

The General Equal Treatment Act of 2006 (AGG, Allgemeines Gleichbehandlungsgesetz), often referred to as the Anti-Discrimination Act, implements EU regulations on anti-discrimination.

The AGG mandates a general prohibition of discrimination against any person for reasons of:

- Race
- Ethnicity
- Gender
- Religion
- Disability
- Age
- Sexual orientation

Employers are obliged to prevent or eliminate any unequal treatment based on these characteristics. This protection covers employees as well as apprentices, job applicants, and temporary workers. Discrimination is prohibited in relation to:

- ■ Recruiting / employment
- ■ Work conditions (including remuneration and conditions of termination)
- ■ Career advancement

As a first step employees affected by discrimination may file a complaint with their superior or with an employee specifically appointed to handle these complaints. In certain cases, discriminated employees may refuse to work until the source of discrimination has been removed. Moreover, discriminated employees have a legal claim against their employer for compensation for material and immaterial damages (material damages only have to be compensated in cases involving actual fault of the employer).

8.3 Termination of Employment

The employer's right to issue a notice of termination may be restricted by individual contracts, collective bargaining agreements or by statute such as the Employment Protection Act 1969 (Kündigungsschutzgesetz).

In the case of a fixed-term contract, the end of the employment period is contractually agreed from the outset. In the case of permanent contracts of employment, certain notice periods are required by law.

After the probationary period of a new employment contract has ended, the initial notice period is four weeks. This increases to seven months after 20 years of job tenure in the same company.

Individual notice periods can be agreed upon, but these must comply with minimum statutory notice periods. The determination of the minimum statutory period depends on whether the employee or employer is seeking to terminate the contract. An employee must submit a notice with a minimum notice period of four weeks, effective either on the 15th or on the end of the month.

Under exceptional circumstances, an immediate termination of contract may be possible.

Every notice of termination must always be issued in writing; electronic form is insufficient.

Special regulations exist to protect recent mothers, mothers-to-be, and severely disabled persons from unjustified dismissal.

8.4 The German Social Security System

Germany has a compulsory social security system that covers five principle areas:

- ■ health insurance,
- ■ nursing insurance,
- ■ pension insurance,
- ■ unemployment insurance and
- ■ accident insurance

Contributions to the social security system are generally shared between employer and employee. The employer withholds the employees share of the contribution and is responsible for the payment to the Federal Insurance Agency.

8.4.1 Health Insurance

Employees that earn a gross wage of less than EUR 4,012.50 (2008) per month are compulsorily insured by one of the public health insurance providers (Gesetzliche Krankenversicherung, GKV). Above this gross wage ceiling, employees can freely choose their health insurance provider and can pick from both public and private insurance companies (Private Krankenversicherung, PKV). Employee and employer also share the premiums for private health insurance plans.

Benefits from public health insurance include the payment of medical and hospital expenses and compensation for loss of salary.

8.4.2 Nursing Care Insurance

Nursing care insurance assumes the financial burden of assistance and support services should a covered person become ill or incapacitated and thus require nursing care.

It is organized mainly in the same way as health insurance, with a contribution rate of 1.95 % of the gross wage. Like with health insurance employer and employee both pay half of the contribution rate, with childless employees paying an extra 0.25 % on top of their contribution.

The assessment ceiling amounts to EUR 3,600 (2008) per month.

The premiums are deducted in the course of payroll accounting and transferred to the nursing care insurance company via the health insurance company.

8.4.3 Pension Insurance

Pension insurance is compulsory for employees. The Contributions to the pension insurance are currently levied at a rate of 19.9% of the gross wage and is divided equally between employee and employer.

The assessment ceiling for pension insurance contributions currently amounts to EUR 5,300 per month (EUR 63,600 annually). For states in eastern Germany, the assessment ceiling is slightly lower at EUR 4,500 (EUR 54,000 annually).

The employee's health insurance company is responsible for collecting these contributions.

8.4.4 Unemployment Insurance

Unemployment insurance is compulsory for employees. The Contributions to the unemployment insurance are currently levied at a rate of 3.3% of the gross wage and is divided equally between employee and employer.

The assessment ceiling for unemployment insurance contributions currently amounts to EUR 5,300 per month (EUR 63,600 annually). For states in eastern Germany, the assessment ceiling is slightly lower - EUR 4,500 (EUR 54,000 annually).

The employee's health insurance company is responsible for collecting these contributions.

8.4.5 Accident Insurance

The accident insurance system is administered by associations (Berufsgenossenschaften) set up by all branches of trade and industry. This insurance provides coverage if an employee suffers an industrial disease or accident at his working place or on the way to work.

In contrast to the other four obligatory insurances (health, nursing, pension, and unemployment), the costs for accident insurance are exclusively borne by the employer. The contribution is fixed by various trade industry associations under consideration of the risk of a work accident occurring in the particular branch, the record of accidents during the previous year and the total annual salaries of all employees affected.

Every employer must inform the relevant association about the establishment of his or her business and register with this organization.

8.4.6 Work and residence permits

EU citizens have the right of migration to Germany. They must apply for a „residence certificate“ confirming their freedom of movement after they have arrived and settled down. The application may not be refused and holders have an unrestricted right to take up employment or to engage in business activities as though they were German citizens.

Citizens from the Eastern and Central European countries that joined the EU on May 1, 2004 and on January 1, 2007 (Bulgaria and Romania) fall under transitional rules for the following five years (seven years in the building and allied trades). They are treated as foreigners from other countries during the changeover period.

Non-EU nationals from third state companies moving to Germany require residence and work permits. While the two are different documents issued by different authorities, the procedures are in fact coupled, insofar as a residence permit will not be issued without demonstration of the applicant's ability to support him or herself financially.

Work permits are initially granted annually. Renewal periods then usually match the residence permit. In case the local labour authorities feel that the position could be filled by an out-of-work German or EU citizen it won't be granted. However, renewal will not normally be refused.

9 Quality of life

9.1 Education

Attending a state-run school is free of charge, and it is compulsory for children beginning at age six. The standards in state schools are usually high, teachers are highly qualified, and student qualifications are internationally recognized.

For the first four years, children usually attend a local elementary school. At the end of elementary school, parents can choose between various types of secondary schools, ranging from lower secondary school (Hauptschule, Realschule) to higher secondary school (Gymnasium). The selection of the secondary school depends on the child's interests and abilities.

Students who gain a qualification from a higher secondary school or Gymnasium (Hochschulreife) can attend university. Students who gain a qualification from a technical or specialized secondary school can attend a university of applied science, where the courses are more practically oriented.

9.2 Communication and transport

Located at the heart of Europe, Germany is Europe's number one logistics market. A sophisticated energy and communications infrastructure and excellent transportation

networks ensure on-time delivery and short roads to success.

Germany has one of the world's most developed transportation and communication infrastructures. Intensive investment since reunification in 1990 has brought the undeveloped eastern Germany (former German Democratic Republic) in line with that of western Germany. A dense and efficient network of motorways, railways, and waterways connects the country with major centres all around the world.

There are 320 airports in Germany. The busiest airport, in terms of aircraft movements, passenger departures, and freight traffic is the Frankfurt (Main) airport, followed by Munich.

Germany is among the world's leaders in telecommunications, served by a modern telephone system and 46.5 million main lines connected by fiber-optic cable, coaxial cable, microwave radio relay, and a domestic satellite system.

9.3 Social security benefits

In Germany, families are given special consideration in the German constitution, the Grundgesetz.

Families benefit from numerous family-oriented regulations, such as tax benefits for married couples and child support. For every child, the government pays an allowance of EUR 154 per month for each of the first three children, and EUR 179 per month for every additional child.

Since 2007, parents have been able to file for parental leave and receive 67 percent of their net income (up to a maximum of EUR 1800 per month) as a parental allowance from the government for a duration of up to 14 months.

In Germany, every child between the age of 3 and 6 has a legal claim to a place in a kindergarten.

Kindergartens are mainly run by the municipalities, churches, and charitable organizations, but also by companies and associations. Parents contribute to childcare costs with an earnings-related payment. In addition, childcare costs may be deducted from the taxable income.



View of the headquarter in Frankfurt/M.

Westend

Offices

VOTUM AG

Wirtschaftsprüfungsgesellschaft · Steuerberatungsgesellschaft

Friedrichstraße 39–41 · 60323 Frankfurt/M. · Germany

Phone: +49 (0) 69/9 71 60-4 40

Fax: +49 (0) 69/9 71 60-4 44

e-Mail: kontakt@votum-net.de

www.votum-net.de

Hofheim office

Nordring 29 · 65719 Hofheim · Germany

Phone: +49 (0) 61 92/9 95 76-0

Fax: +49 (0) 61 92/9 95 76-28

Wiesbaden office

Oranienstraße 24 · 65185 Wiesbaden · Germany

Phone: +49 (0) 6 11/97 45 69-3 · Fax:

+49 (0) 6 11/97 45 69-5

PARTNERS

National:

KMO Kestler Mielert Otto

Attorneys at law

Wiesenau 36 · 60323 Frankfurt/M. · Germany

Phone: +49 (0) 69/9 71 60-0

Fax: +49 (0) 69/9 71 60-444

e-Mail: frankfurt@kmo-legal.de

www.kmo-legal.de

Studio Rubini e Partners

Dottore Commercialista & Revisore Contabile

37131 · Piazza Bra 10 · Verona · Italy

Phone: +39 / 04 58 00 29 78

Fax: +39 / 04 58 00 95 62

e-Mail: studiorubini@studiorubini.it

www.rmbpartners.com

International:

MGI – Midsnell Group International

6th floor · Brettenham House · Lancaster Place

London WC2E 7EW · United Kingdom

Phone: +44 / 19 32 85 33 93

Fax: +44 / 19 32 85 33 23

e-Mail: secreteriat@midsnell.co.uk

www.mgiworld.com

Zukerman Gore & Brandeis LLP

Attorneys at law

875 Third Avenue · New York · NY 10022 · USA

Phone: +01 / 212 223 6700

Fax: +01 / 212 223 6433

e-Mail: info@zgbllp.com ·

www.zgbllp.com

The MGI network allows us to be present and active in 80 countries worldwide, particularly in

Belgium, Canada, China, Czech Republic, Denmark, France, Hong Kong, Hungary, India, Ireland, Italy, Japan, Netherlands, Norway, Poland, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan, United Kingdom, United States of America

BF Consulting Wirtschaftsprüfungs-GmbH

Tax Advisor and Austrian Certified Auditors

Mariahilfer Straße 32 · A-1070 Wien · Austria

Phone: +43 / (0) 15 22 47 91

Fax: +43 / (0) 1 52 24 79 11

e-Mail: office@bf-consulting.at

www.bf-consulting.at

For a complete list of member countries:

www.mgiworld.com

www.votum-net.de

