

DOING BUSINESS

IN GERMANY



The network
for doing
business

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1 – INTRODUCTION

UHY is an international organisation providing accountancy, tax business management and consultancy services through financial business centres in around 90 countries throughout the world.

Through this network business partners work together. So not only specialist knowledge and experience within the own border can be offered. But, they are also able to conduct transnational operations for clients.

This detailed report provides key issues and information for investors considering business operations in Germany. It has been provided by the offices of UHY representatives. A detailed firm profile of UHY's representation in Germany can be found in section 8. You are more than welcome to contact single firms for any inquiries you may have.

Information in the following pages is periodically updated. Anyway, inevitably the information given is general and subjected to change and should be used for guidance only. For specific matters, you are strongly advised to obtain further information. Additionally, you should seek for professional advice before making any decisions. This publication is current as of March 2019.

We look forward helping you doing business in Germany.

2 – BUSINESS ENVIRONMENT

GEOGRAPHY AND CLIMATE

Germany is located in the centre of Europe and is one of the largest European countries. Neighbouring countries are Poland, the Czech Republic, Austria, Switzerland, France, Luxembourg, Belgium, the Netherlands and Denmark.

The capital of Germany is Berlin. However, the main business centres are Hamburg, North-Rhine Westphalia (Cologne, Dusseldorf), Frankfurt, Stuttgart and Munich. International airports are located in all of these cities. Germany also has access to the North and the Baltic Sea. The port of Hamburg is one of the largest container transshipment centres in Europe.

Germany belongs to the temperate climate zone of Central Europe, where the climate is mild. In general, summers are not too hot and in winter, temperatures are around freezing with some snowfalls. The average annual rainfall is 800mm; the average annual temperature is 10°C.

CONSTITUTION AND GOVERNMENT

Germany is a parliamentary democracy with a pronounced federal structure.

Legislative and executive powers are divided between the federation and the 16 federal states, namely Baden-Wuerttemberg, Bavaria, Saarland, Rhineland-Palatinate, Hesse, Thuringia, Saxony, Saxony-Anhalt, North-Rhine Westphalia, Lower Saxony, Berlin, Brandenburg, Bremen, Hamburg, Schleswig-Holstein and Mecklenburg-Western Pomerania. The federal parliament has responsibility for national matters such as international affairs, defence and economic policy and taxation. The legislatures of the 16 federal states are responsible for issues such as education and property.

At the federal level, the most important legislative institutions are the *Bundestag* (federal parliament) and the *Bundesrat* (the upper house representing the federal states). Whilst the power of the German president is limited to representation, the position of the chancellor is strong.

The country's constitution is based on the Constitution passed in 1949. Upon reunification in 1990, its applicability was extended to the states of the ex-German Democratic Republic (GDR).

German legislation is modelled on the old Roman system and has no resemblance to the Anglo-Saxon legal system.

DOMESTIC MARKET

POPULATION, SIZE AND LANGUAGE

Population	83 million inhabitants
Land area	357,376 square kilometres, measuring 885 kilometres from north to south and 595 kilometres east to west
Population density	232 inhabitants per square kilometre
Currency	Euro (EUR)
Official language	German

ECONOMY

Germany is a founding member of the European Union.

Germany is also part of the United Nations, the OECD, NATO, the G8, G20 and the European Monetary Union (EMU).

Based on its nominal gross domestic product (GDP), Germany is the third largest political economy and the second largest export nation. German GDP was EUR 3,388 billion in 2018.

In 2018, the service sector accounted for 74.4% of total employment compared with 1.4% in agriculture and 24.2% in industrial production.

Unemployment figures vary year to year. The average rate of unemployment during 2018 was 5.2%. This compares with rates of 5.7% in 2017, 6.1% in 2016, 6.4% in 2015, 6.7% in 2014, 6.9% in 2013, 6.8% in 2012, 7.1% in 2011, 7.7% in 2010, 8.1% in 2009 and 7.8% in 2008. In March 2019, the rate of unemployment was 5.1%.

The annual average inflation rate was around 1.8% in 2018. In March 2019 this index was 1.7%. This compares with rates of 1.5% in 2017, 0.5% in 2016, 0.5% in 2015, 1.0% in 2014, 1.4% in 2013, 2.0% in 2012, 2.1% in 2011, 1.1% in 2010, 0.3% in 2009 and 2.6% in 2008.

The German economic model aspires to be a functioning social market economy, in which free market economics are linked with solidarity and social compromise.

PRICES AND INTEREST RATES

Since Germany is part of the EMU, monetary policy is managed by the European System of Central Banks. The European Central Bank (ECB), based in Frankfurt, is the common monetary authority of all member states of the EMU. It is one of the organisation's responsibilities to supervise the banking system and the regulation of money supply. The two most important goals are the stability of the price level and to ensure steady economic development. One instrument to pursue these goals is the regulation of the key interest rates.

Prime interest rates influence the business between the ECB and other banks and the exchange rate of the Euro against other currencies. Since 1st January 2019, the basic interest rate has been rated -0.88%.

FOREIGN TRADE AND BALANCE OF PAYMENTS

Germany is one of the world's most active trading countries with a significant surplus. In 2018, the volume of exports was EUR 1,318 billion, while the volume of imports amounted to EUR 1,090 billion. The foreign trade balance in 2018 reached a surplus of EUR 228 billion. In 2017, the surplus amounted to EUR 248 billion.

More than 50% of exports of German goods are delivered to European countries. Germany's high trade surplus in 2018 resulted from its trade with the United States (total exports EUR 113.29 billion). Other important trade partners are France (EUR 105.27 billion), China (EUR 93.04 billion), the Netherlands (EUR 91.15 billion), the United Kingdom (EUR 82.05 billion), and Italy (EUR 69.92 billion).

The mainly exported goods are manufactured products – machinery, automobiles and car parts and chemical products. One of four jobs in the German industry depends on exports.

The German industry has increased its competitiveness considerably in recent years and has maintained and expanded its leading market position in the domestic, European and international markets.

THE FINANCIAL AND BANKING SYSTEM

The German banking system and the German financial services industry are stable and well-developed. Frankfurt is the financial centre of Germany. It is the domicile of the ECB along with the most important stock exchange of the country and the Eurex (European exchange).

The German financial system consists of the following:

- Banks
- Insurance companies
- Investment companies
- Operators of stock exchanges and equity markets
- Operators of payment systems
- Central banks
- Trade markets.

The goal of a financial system is to allocate deposits and transform money into loans to make it available for investments. This ensures a significant input to German economic growth.

Many forms of debt financing are possible. Short-term arrangements include bank loans, trade credit from suppliers, commercial and financial contracts, factoring of receivables, etc.

Forms of long-term financing include open-market borrowings (bonds, notes, etc.) and direct borrowings (mortgages and term loans). Leasing arrangements represent a further option for long-term financing.

The capital market in Germany has become more important over the recent years. As a consequence, all major new capital instruments of financing or risk hedging, such as derivatives and swaps, are available to investors.

Additionally, the following banking transactions can be carried out:

- Deposits
- Discount business
- Portfolio & investment management
- Guarantee business
- Giro business (cashless payments and clearings)
- Electronic banking.

Banking transactions in Germany are facilitated by an extensive branch network of German banks and credit institutions, as well as extensive international linkages and a sophisticated technical infrastructure.

The German banking industry is dominated by several large banks. All German banks are federally chartered. The German banking system is characterised by ‘universal’ banks on one hand and ‘niche’ players on the other hand.

Universal banks offer a full range of banking and financial services. These are dominated by internationally known names. The advantage of the universal banking system is that companies can establish long-term relationships with their respective bank, thereby avoiding the short-term view present in the Anglo-Saxon financial markets system. ‘Niche’ players are smaller financial institutions that have succeeded in offering specialised services.

The German financial institution system comprises all major forms of enterprise such as private credit institutions, savings banks, co-operative credit institutions, security houses, mortgage houses, trust companies and credit unions. Their responsibilities range from capital and credit for private persons and commercial enterprises, provision of payment solutions to wide-ranging possibilities for the investment of assets.

Foreign banks are permitted to establish German subsidiary operations. They tend to have only a few branches and focus on the business market, rather than providing full-service banking. EU legislation on bank licences has been fully implemented in Germany.

WORKING AND LIVING CONDITIONS

VISA/RESIDENCE TITLE/WORK PERMIT

All foreigners who are non-EU and non-European Economic Area (EEA) nationals require a visa/a residence title for stays in Germany. Nationals from EU and EEA member states and citizens of Switzerland do not need a visa/a residence title to enter or to reside in Germany. After arrival, they only need to register with the appropriate authority of their residence in Germany.

A short-term visa (the so-called ‘Schengen’ visa) is sufficient for a stay up to 90 days. For several types of foreigners, a visa is not required for a stay up to three months within a six months period, provided they do not take up gainful employment, which requires a work permit (e.g. Australia, Canada, Israel, Japan, New Zealand, South Korea and the United States etc.). However, such foreigners can only enter Germany if they have valid identity papers. On the planned date of departure from Germany, these papers should have at least three months validity.

For stays of more than three months or if a foreigner intends to take up employment, a national visa and/or a work permit is required. In principle, nationals from the EU and EEA member states and citizens of Switzerland do not require a work permit. However, for new member states of the EU the free movement of workers can be restricted up to seven years. All other foreigners require a work permit in addition to a residence permit if they want to take up gainful employment. This work permit is required before entering Germany. Nationals of Australia, Canada, Israel, Japan, New Zealand, South Korea and the United States may apply for the permit after arrival in Germany.

Under German law, consulates and embassies issue visas of the Federal Republic of Germany. Visas are issued by the delegation responsible for the country/area in which the applicant has his/her citizenship. For work permits the authority's approval is needed. The responsible authority is where the work is supposed to take place. Additionally, the Federal Employment Office has to approve the issuance of the visa, too.

COST OF LIVING AND HOUSING

Although the living expenses are generally high, the amount varies from region to region. Munich e.g. is one of the most expensive cities in Germany.

The average costs for housing vary between EUR 7.50–20.50/m² (a base rent per month). The average cost for office space in big cities varies between EUR 15–40/m² for downtown locations and EUR 10–20/m² for suburban areas.

3 – FOREIGN INVESTMENT

There are no substantial restrictions on foreign investments in Germany. Foreign investors are generally subjected to the same conditions as German investors.

No permanent currency or administrative controls are applicable. However, certain investments may involve official registration and permit regulations, which may entail considerable bureaucracy. For example, special licences are required for risky business practices like insurance, commercial banking, brokers and agents. Special business permits are required because of environmental regulation pursuant to the Federal Pollution Control Act (*Bundesimmissionsschutzgesetz*). The local administration and tax authorities have regulations which have to be followed when you want to register.

Foreign investors see that Germany is a good location for manufacturing, research and development and establishing companies headquarters. Even during the crisis year of 2009, Germany maintained its international reputation as an investment destination. It ranks as one of the world's most attractive investment locations (alongside investment locations like China and the United States).

In particular the services sector makes a strong impression among investors. The sectors of renewable energy, mechanics and electronics, chemicals and health are also seen as attractive. International investors have realized that Germany is reliable and competitive; this applies to the full range of high technologies and services.

Investing companies are mainly from Europe, Asia and North America. But, there has been a notable shift of interest towards investors from Asia, especially Indian and Chinese companies. Also noticeable is the growing interest of Israeli and Turkish companies in Germany, especially in the high technology sector, such as medical technology, health care industry and nanotechnology. Turkish companies have intensified their commitment mainly in the textiles and home ware products area.

TEN REASONS FOR INVESTING IN GERMANY

LARGE MARKET

With 83 million inhabitants, Germany is the EU's most populous country and, therefore, also its largest market. With a GDP of almost EUR 3.4 trillion, Germany is the largest economy in Europe and one of the strongest economies in the world.

CENTRAL LOCATION

Germany's central location in Europe makes it a hub for goods and services. Germany has especially benefited from the EU enlargement. As a result, it is the only country among the seven most important and industrialised nations to increase its share of world trade since 1995.

OPEN MARKET

Germany is an open market and welcomes foreign investors warmly. This is demonstrated by the 27,000 foreign enterprises that have established businesses in Germany and now employ more than 3 million people. The German market is open to entrepreneurial investment in almost every area. There are no longer any state-controlled industries. Germany is receiving an increasing attention from private equity firms and hedge funds due to its attractive companies and favourable investment conditions.

INTERNATIONAL LOCATION

Around 9.5 million foreigners live in Germany. Several metropolitan regions have prominent foreign communities with their own schools, churches, shops and restaurants. For example, a large number of Japanese people live in the Dusseldorf region; many Koreans live in and around Frankfurt and many Chinese live in Hamburg. Approximately 70% of German blue- and white-collar workers speak English.

QUALIFIED PERSONNEL

Germany offers an exceptionally well-qualified, motivated and conscientious workforce. The high standard of knowledge and skills among German employees is internationally recognised.

HIGH LEVEL OF INNOVATION

Germany has 371 world-market relevant patents per one million inhabitants, being top placed in international comparison. The close cooperation between industry and world-famous research institutions like the Max Planck and Fraunhofer Institutes swiftly transforms new ideas into products for the world market.

HIGHLY DEVELOPED INFRASTRUCTURE

Germany has a closely knit network of roads, railways and international airports which guarantees swift connections.

LEGAL SECURITY

Germany is a modern constitutional state with transparent and reasonable laws. These advantages are known at the international stage. Among all countries, Germany ranks sixth in terms of legal security.

STRONG 'MITTELSTAND'

The German economy is characterised by privately owned small and medium-sized firms, known as the *Mittelstand*, employing less than 500 workers and generating annual sales of up to EUR 50 million. 99.5% of all businesses are small or medium-sized. This makes German industry flexible, multi-faceted and competitive. Many of these highly specialised firms are world market leaders in their field.

WORLD-FAMOUS TRADEMARK

Products with the 'Made in Germany' seal stand for the highest quality worldwide. This has played a significant role in maintaining Germany's position as a world export champion for many years. The automotive, mechanical engineering, electrical engineering and chemical sectors are particularly strong. Industries of the future such as environmentally friendly energy production and nanotechnology, in which the number of patent applications is doubling every two years, are steadily gaining importance.

4 – SETTING UP A BUSINESS

As a foreign investor there are two ways available to set up a business in Germany, involving the foundation of:

- A legally dependent branch of a foreign company, or
- A legally distinct subsidiary.

A sole proprietorship may be the easiest way for a natural person to establish a business in Germany.

There are also the following methods for doing business in Germany. By establishing:

- An independent sales agent
- An independent distributor
- A representative office.

BRANCH

When they already have an existing business abroad, all foreign investors are able to open a branch (individual entrepreneurs, corporations or partnerships). Part of the process does require registering the branch at the local court and municipality. Although, such a branch is an unincorporated body, it is entitled to act as a legally binding entity on its own name.

SUBSIDIARY

When an investor decides to open a business in Germany there are various different structures of subsidiaries. The German Commercial and Company Law distinguishes between partnerships and corporations.

The decision regarding the structure of the subsidiary should be based on its liability and the tax situation. E.g. a corporation is a legal entity and liable itself. The liability is limited to the value of its assets. Partnerships, on the other hand, are also legal entities, but, partners are personally liable for any debt.

The next section will give a brief overview of the most common ways to open a subsidiary.

PARTNERSHIP

GENERAL PARTNERSHIP (*OFFENE HANDELSGESELLSCHAFT – OHG*)

A general partnership can be formed by two or more individuals or entities (German or foreign corporations, or partnerships of natural persons).

A general partnership can be created by agreement and has to be registered at the local courts. The partners, as mentioned before, are personally liable. They bear liability jointly and severally for all of the partnership's obligations. As legal entity a general partnership can acquire rights, create obligations, acquire ownership and so on (e.g. suing). A partnership is seen as a transparent vehicle fiscally. The partners have to contribute capital and efforts but then they can reap the benefits of their labour as agreed upon in the partnership's agreement. If the partnership's agreement does not state otherwise, all partners are entitled to manage and represent the general partnership.

LIMITED PARTNERSHIP (*KOMMANDITGESELLSCHAFT– KG*)

Like the general partnership, a limited partnership can be formed by two or more individuals or entities (German or foreign corporations, or partnerships of natural persons). It also needs an agreement and has to be registered. In contrast to a general partnership, a limited partnership has 'general' partners with unlimited and limited partners. A limited partner's liability is restricted to his/her contribution to the partnership. But, this restriction only becomes effective after registration at the local court. Unless otherwise agreed upon, limited partners do not participate in the management and cannot represent the limited partnership.

A 'GmbH & Co. KG' is an example of a limited partnership with a sole general partner being a private limited liability company (*Gesellschaft mit beschränkter Haftung, GmbH*). The main characteristics of a 'GmbH & Co. KG' are:

- Limited liability of the general partner
- The partnership owns the company's assets
- The partnership runs the actual business under an administration
- There is management and representation of the general partner.
- Transparent from the income-tax point of view

SILENT PARTNERSHIP (*STILLE GESELLSCHAFT*)

A silent partnership can be created by a contribution to an already existing enterprise (partnership, company, etc.). It is not a legal entity but a financial participation on a contractual basis. Silent partners do not participate in the management of the enterprise and cannot represent the silent partnership. The contribution of the silent partner can simply be seen as an investment. The silent partners share the enterprise's profits and losses. Since the silent partnership is more a financial investment, the silent partnership is not visible for the outside world.

CIVIL LAW ASSOCIATION (*GESELLSCHAFT BÜRGERLICHEN RECHTS – GBR*)

A civil law association can be formed by two or more persons and is created through agreement. The founders need to achieve a common purpose. Although a civil law association is not a legal entity, but, it is legally responsible. Property can be acquired by the association and can be owned by the partners in joint tenancy. Each partner is liable without restriction for the association's obligations. They also manage and represent the association as a joint venture and all decisions require the consent of every partner.

This form of partnership is commonly used by small entrepreneurs, self-employed persons or other short-term projects of larger enterprises or joint ventures (e.g. large construction projects). A civil law association is not registered anywhere.

PROFESSIONAL PARTNERSHIP (*PARTNERSCHAFTGESELLSCHAFT – PARTG*)

A professional partnership is a company of freelance professionals, e.g. architects, engineers, consultants, lawyers or auditors. A professional partnership can be established by written agreement of the partners and has to be registered. A professional partnership can create rights and obligations, acquire and own property and sue or be sued. The partners are jointly and severally liable, except in situations where only a number of partners due to their own misconduct cause a liability to the partnership. Then only these partners are liable. In that case the insurance for professional misconduct must be EUR 10 million at least. Partners are entitled to manage and represent the partnership as they see fit, if not stated otherwise in the partnership's agreement.

PROFESSIONAL PARTNERSHIP WITH LIMITED PROFESSIONAL LIABILITY (*PARTNERSCHAFTGESELLSCHAFT MIT BESCHRÄNKTER BERUFSHAFTUNG – PARTGMBB*)

Since 2013 lawyers, tax consultants and accountants have the possibility to set up a partnership with limited professional liability.

In contrast to partnership the partners of a limited partnership are only liable for damages because of incorrect professional practice with their partnership assets. Mandatory for the limited partnership is a professional liability insurance in the amount of at least EUR 2.5 million for each case of insurance, but at least EUR 10 million per year. Another requirement is that the limited liability is apparent on the outside. This means the partnership needs to add the limited liability in the name (e.g. mbB).

The limited liability partnership is formed through maintaining the insurance and the registration at the partnership register. Only if the partnership is registered the limited liability becomes effective.

The limited liability only includes damages because of incorrect professional practice. Thus there is no limited liability regarding employment contracts, leases or purchase agreements.

Unattached stays the personal liability of the partners due to a claim that the partnership may has against a partner. This is a claim for existing obligations towards the partnership. But, the partners are only liable to diligence they exercise in own matters.

CORPORATIONS

There are various forms of corporations.

In Germany a corporation is regarded as a separate legal entity. The shareholder's liability is restricted to the value of corporations assets. Corporations do not depend on a certain number of shareholders and can be formed by one or more persons including corporations, partnerships or individuals. These persons can be residents or non-residents.

Establishing and maintaining a corporation is more expensive than a partnership or a proprietorship. German business and company law has more regulations regarding corporation. They also require more review and information.

The shares of corporations can be traded privately or publicly. In cases of private corporations, shares may not be sold to the general public. Public corporations are subjected to various disclosure and reporting requirements. They have to state relevant security commissions in prospectuses before offering shares to the general public.

STOCK CORPORATION (*AKTIENGESELLSCHAFT – AG*)

Stock corporations are a commonly used corporation in Germany. They have a popular structure for commercial enterprises with large capital needs. The major difference between a limited liability company and a stock corporation is that a stock corporation can trade its shares on the stock exchange. A stock corporation can be either quoted on one of the German stock exchanges (e.g. Frankfurt) or be held as long-term participations without being quoted. Shares can be dealt out by contracts of sale, whereas for limited liability companies the contracts have to be notarised.

A stock corporation has a management and a supervisory board. Although a shareholder can be a member of one of the aforementioned boards he/she cannot direct the managers on how to conduct the business of the corporation.

A stock corporation must be registered at the local court and present a share capital of at least EUR 50,000.

LIMITED LIABILITY COMPANY (*GESELLSCHAFT MIT BESCHRÄNKTER HAFTUNG – GMBH*)

Limited liability companies are the most commonly used type of corporation in Germany. This form of corporation is mostly used by both German medium-sized businesses (these are very often family-owned and owner-managed businesses) and subsidiaries of foreign companies. In comparison with a stock corporation handling the business and administrative efforts are less formal and complex.

German law requires a share capital of at least EUR 25,000 and registration. The founding act and the articles of association have to be notarised. Anyway, the corporation does not exist before completion of its registration.

A limited liability company is managed and represented by the managing directors, who are chosen by the shareholders. A shareholder can also be a managing director. A managing director can be directed by a shareholder's resolution.

It is allowed to register an office at a different place than the place of business activity. Although the place of business activity can be abroad, there has to be a German office address for the recognition of the company's existence.

BUSINESS COMPANY (*UNTERNEHMERGESELLSCHAFT, HAFTUNGSBESCHRÄNKTE – UG (HAFTUNGSBESCHRÄNKTE)*)

A business company is a type of a limited liability company and can be founded under similar conditions. However, the amount of share capital can be determined in the articles of association. The minimum amount has to be EUR 1 but not more than EUR 24,999. In contrast to the Limited Liability Company the share capital has to be paid in cash. Contributions in kind are not allowed.

Although, a transformation is not necessary, the business company is seen as preliminary stage to the GmbH. Therefore, a part of the annual net profit has to be set aside into reserve. This reserve is only allowed to use for certain purposes e.g. balance of the net loss and capital increase. Only if the business company transforms into a GmbH the formation of reserves with the annual net profit is not necessary anymore. If the business company does not change into a GmbH the annual net profit has to be used for the legal reserve even if the amount exceeds EUR 25,000.

Due to the limited liability and the small amount of share capital, a business company does not have good credit.

REAL ESTATE INVESTMENT TRUST (REIT)

With 1 January 2007 Germany introduced the Real Estate Investment Trust (REIT) which is a tax-exempt legal entity. Under German law, a REIT is a listed stock corporation and has to meet the following conditions:

- It needs a German-registered office and place of business
- Shares have to be registered for trading on a public exchange in a member state of the EU or EEA
- The free float (volume of shares traded on the stock exchange) at the time of listing must be at least 25%
- Its real estate assets account for at least 75% of its gross assets
- Rental income from real estate accounts for at least 75% of its total income
- 90% of its income is distributed to its shareholders.

Although if corporations meet the above requirements they are exempted from income tax, trade tax and solidarity surcharge. REIT is not a popular company structure in Germany.

LIMITED PARTNERSHIP WITH SHARE CAPITAL (*KOMMANDIT-GESELLSCHAFT AUF AKTIEN – KGAA*)

A limited partnership with share capital is comparable with a stock corporation. However, at least one general partner is personally liable for the company's debts. This form of corporation is also not popular in Germany.

SOCIETAS EUROPAEA (SE)

A SE is a corporation based on EU law. A SE can be registered in any member state of the EU whereby its company domicile can be easily relocated to another state of the EU. A SE is a legal entity and present share capital to the amount of EUR 120,000. It may be founded by a merger of stock corporations from at least two different states of the EU or by conversion.

FOREIGN COMPANIES

As a result of the right of free movement of business within the EU, companies regulated by the jurisdiction of another state of the EU may move their company domicile within the EU. In cases where they move to Germany, the courts have to observe the legal characteristics of such a company and are not allowed to apply only German law.

OTHER TYPES OF COMPANY/BUSINESS ENTERPRISE

SOLE PROPRIETORSHIP (*EINZELKAUFMANN*)

A sole proprietorship is the easiest way to run a business under German law. A sole proprietorship is not a legal entity but the individual running the business bears full liability. This structure is especially popular with small businesses. It does not require the filing of papers. Local permits except the registration for trade are not needed. The liable proprietor is subjected to taxation and has to register the business.

INDEPENDENT SALES AGENT/DISTRIBUTOR AND REPRESENTATIVE OFFICE

If a foreign investor does not intend to have any staff based in Germany, the easiest way to set up business relationships are independent sales agents and independent distributors. It is common to use sales agents or independent distributors to sell foreign company's goods in Germany. A representative office in Germany is not subjected to all the requirements of opening a branch or subsidiary.

In every case the decision which form of investment or structure should be used to do business in Germany depends on the investor's circumstances.

5 – EMPLOYMENT

EMPLOYMENT CONDITIONS

APPLICABLE LAW

If an employee works in Germany it is generally also possible that the parties agree upon foreign employment law. However, the compulsory German employment rules have to be regarded even if the parties declare foreign employment law is applicable. Furthermore, in these cases usually German social insurance law is applicable (see below). Also from this point of view the application of German employment law is advantageous as the German employment and social insurance law are adapted to each other, for example regarding the continued remuneration in case of sickness. In general, it usually is recommendable to agree upon the applicability of German employment law in case of an employee working in Germany.

EMPLOYMENT CONTRACT

The employment contract forms the basis of the relationship between the employee and the employer.

The terms of the contract can be freely negotiated by both parties subject to existing legislation, collective agreements where applicable (see below) and work agreements with a potential works council where applicable (see below).

Every employment contract has to comply with the current legislation and the labour law based on the jurisdiction of the Federal Labour Court (see below regarding the main rules).

There are also special rules in Germany regarding the possibility of employment contracts for limited periods.

It is very important that the wording of the employment contract is precise and that it is formulated exactly based on the respective German law. According to the jurisdiction of German labour courts every clause in an employment contract which is unclear or deviates from compulsory law is invalid. Thus, it is advisable that the contract is drafted by a German attorney for employment law.

MAIN STATUTORY RULES

Most of the basic rights and duties of the employer and the employee are settled in labour protection laws such as the following:

- 1) German Civil Code
- 2) Act concerning the statutory minimum wage
- 3) Act concerning continued remuneration during sickness
- 4) Act concerning vacation paid
- 5) Working-Time Act
- 6) Act Against Unfair Dismissal
- 7) Act concerning limited employment contracts and part-time work
- 8) Acts concerning maternity protection and parental leave
- 9) Act concerning severely disabled employees
- 10) Act concerning trainees.

These codes contain a lot of compulsory rules from which the parties of the employment contract cannot deviate.

Some examples for basic working conditions:

The statutory minimum wage in Germany is EUR 9.19 gross per hour in 2019 and will increase to EUR 9.35 gross per hour in 2020. There are very rare exceptions from this general rule. In some industries there are statutory collective agreements with higher wages (see below).

The usual working time of a full-time-employee is 8 hours per day and 40 hours per week. The maximum working time allowed is 10 hours per day on six days (Monday to Saturday). The average working time shall not exceed 48 hours in the average during a period of six months.

Working on Sundays and statutory holidays is generally not allowed. The exceptions (quite rare) are explicitly mentioned in the law.

The minimum of paid vacation days is 20 working days per year in a five-day week. However, this is quite rare. Usual are 24-30 working days. Besides that during statutory holidays the employees have to be paid.

In case of sickness the employer has to continue the payment of the remuneration for six weeks.

There are special rules regarding a (time-)limited contract, a probationary period, termination and notice periods, which already have to be regarded in the employment contract (see also below).

A lot of further special rules have to be observed such as for example regarding unpaid overtime (important point in the employment contract) and very detailed rules for post contractual non-competition-clauses.

COLLECTIVE AGREEMENTS

According to German law, employer associations and trade unions are able and entitled to negotiate wage settlements and working conditions in collective agreements without interference from government bodies. Wage bargaining represents a collective process during which working conditions and wage settlements are negotiated for entire occupational groups in various industries.

A collective agreement is valid for the employment relationship if the employer is member of the employers' association and the employee is member of the labour union. Membership is voluntary. Employers who are a member of the employers' association frequently declare that collective agreements are applicable in the employment contract in order to treat organised and non-organised employees equally. For smaller companies without membership in the employer's association, no collective agreement is generally declared as applicable.

In some branches, collective agreements exist which have been declared as applicable for all employees in that industry by the government, regardless of any memberships.

WORK AGREEMENTS

Working conditions can also be settled by the employer and the works council and are binding for all employees of the company. German companies are not obliged to have a works council. It is up to the employees themselves to establish one. If a works council exists, it has many rights of co-determination and to receive information based on the Works Council Constitution Act. In addition, the works council must be informed and consulted prior to any termination.

TERMINATION OF EMPLOYMENT CONTRACTS

Every employer and employee can at any time and without a notice period terminate the employment contract extraordinarily based on a severe cause such as criminal behaviour of the employee, non-payment of salary or discrimination by the employer.

For an ordinary termination both parties have to observe the relevant notice period stated in the German Civil Code, the labour contract and/or collective agreements.

In small companies, generally with not more than ten employees, the employer normally does not need a special reason for an ordinary dismissal and generally does not have to compensate the employee.

In larger companies, generally with more than 10 employees, the employer needs a reason for a dismissal in order to comply with the Act Against Unfair Dismissal. There are detailed requirements for a termination which can be based on the behaviour of the employee, personal or operational reasons. Employees can file for unfair dismissal at the Labour Court with the aim of continuing the employment relationship. These cases are often settled by an agreement upon the termination of the employment and a compensation payment.

TRANSFER OF BUSINESS

In cases where a whole business or parts thereof are transferred from one owner to another the law regarding the implications of such a transfer of business for the employees has to be observed. The general rule is that all employees have to be taken over to the same conditions. However, the legal question whether or not such a transfer of business takes place is complicated and depends from all circumstances of the individual case.

SOCIAL INSURANCE

The general rule is that every employee who works in Germany is subject to the German social insurance regardless of his citizenship or place of residence and no matter which employment law the parties have declared as applicable. There are exceptions for expatriates and employees who work in several countries.

Social insurance coverage in Germany is statutory for all employees.

The compulsory insurance plan serves to protect people from hardship due to sickness, nursing, work-related accidents and unemployment. Moreover, statutory pension insurance is compulsory for all employees.

The contributions to the statutory accident insurance regarding work-related accidents are only paid by the employer (and not by the employee) according to a certain key and the amount of the gross salary in the company.

The other social insurance contributions are paid nearly half by the employer and half by the employee. They are directly paid to the authorities by the employer. Any gross payment agreed upon by parties does not include the social insurance contributions to be paid by the employer (the rates mentioned below).

TABLE 1

Total social security contribution rates for 2019 (to be paid half by the employer)

CONTRIBUTION TYPE	RATE
Health insurance	14.60 % of the gross monthly salary
Nursing insurance	3.05 % of the gross monthly salary
Pension insurance	18.60 % of the gross monthly salary
Unemployment insurance	2.50 % of the gross monthly salary

Dependent on the particular health insurance company only the employees have to pay additional contributions which go beyond the half of the aforementioned rates. Employees with no children have to pay a small additional contribution to the nursing insurance.

Salaries higher than the following gross monthly salaries do not cause a further increase of contributions.

TABLE 2

2019 income thresholds (monthly, upper limit)

	OLD FEDERAL STATES	NEW FEDERAL STATES
Health & nursing insurance	EUR 4,537.50	EUR 4,537.50
Pension and unemployment insurance	EUR 6,700.00	EUR 6,150.00

Employees earning above certain limits (generally for 2019: EUR 5,062.50 gross per month with exceptions) are free either to join the compulsory health insurance system or to choose a private health insurance. The employer has to participate in these contributions too, but not to a higher rate than in case of a statutory health insurance.

WAGE TAX

The wage tax is only borne by the employee. But the employer is obliged to deduct the correct wage tax from the gross salary and to pay it directly to the tax authorities and is liable in so far. The individual taxation is based on the individual situation of the employee (see for the taxation below).

6 – TAXATION

The taxation of commercial activities in Germany depends on the particular form of business organisation.

The main aspect to be considered in this context is that partnerships are not taxable entities for the purposes of income or corporate income tax. They are only subjected to trade tax and any income of partnerships is taxed at the level of the shareholders. In contrast, a corporation represents an independently taxable entity for all kind of taxes (transparent taxation).

For general information on taxation in Germany, please see:

www.bundesfinanzministerium.de

PARTNERSHIPS AND INDIVIDUALS – INCOME TAX

TAXABLE PERSONS

German residents are liable to income tax on their worldwide income, while non-residents are generally liable to tax on certain German-sourced income. A German resident is an individual whose domicile or habitual place of abode is in Germany. A domicile is a home at the disposal of the taxpayer which he/she maintains for a long term. A habitual place of abode is a location where an individual is physically present for a continuous period of more than six months.

Partnerships, such as an OHG, KG, GbR, professional partnership and sole proprietorship, are generally not considered as separate legal entities from the tax point of view. Therefore, the partners themselves are usually subjected to all rights and obligations. Accordingly, partnerships are not subjected to income or corporate income tax, but only to trade tax. Income from a partnership is allocated to the partners. When partners are individuals, the income is subject to income tax at the partner's level where the individual tax rate is applicable to each of them. When partners are corporations, the income is subject to corporate income tax.

In order to achieve a neutral tax burden between partnerships and corporations, individuals have the possibility to choose for a reduced income tax rate. This rate is applicable to the retained earnings (*Thesaurierte Gewinne*) of partnerships. The rate amounts to 28.25% plus a solidarity surcharge, which results in a total rate of 29.8%. 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 corporate income taxation.

Germany has entered into a large number of agreements for the avoidance of double taxation with other countries. In these treaties there are rules for situations where an individual is subject to tax for the same matter in two different countries.

Terms of agreements for the avoidance of double taxation override German tax law and, if an individual is deemed to be a resident of a foreign country under such an agreement, his/her German tax liability will then be computed or exempted in accordance with rules of the treaty agreement. This depends on the procedure which is agreed on in the treaty. There is an exemption procedure, where the other country gets the tax sovereignty. There also is the imputation system, where the tax will be reduced, because of the tax paid in the other country.

TAXABLE INCOME

Taxable income comprises the entire annual income from the following sources:

- Agriculture & forestry
- Business establishments (trade)
- Independent professional services
- Employment
- Capital investment
- Rental income from immovable property and certain tangible movable property
- Income from royalties
- Other income (gains from private transactions, alimony, annuities, etc.)

Income tax is based on a progressive scale, depending on the amount of the income. Calculating the income German legislation allows deductions of certain expenses economically linked with the various sources of income. A decrease can be granted for itemised expenses. In some cases, relief can only be granted on the basis of standard allowances. In other cases the tax payer is allowed to choose between itemised or standard deductions.

There are two different methods to compute taxable income – the net worth comparison method and the net income method. Depending on the type of income a different method is used. The income from agriculture and forestry and from business establishments or trade is calculated on the basis of the net worth comparison method. For employment, capital investment, rental income and other income, the net income method applies. Where income is generated from independent professional services, the taxpayer is able to choose the method. Income from capital investments, which includes dividends, interest, royalties, income from typical silent partnerships, capital gains from the sale of shares (provided the participation rate lies under 1%, otherwise it belongs to trade earnings) and financial instruments, are generally subjected to a flat withholding tax of 25%, adding solidarity surcharge it results in a total rate of 26.35%. For this income, a standard deduction of up to EUR 801 per year is granted. Other expenses economically connected to investment income are not deductible. However, in cases where the tax burden by the flat withholding tax exceeds the marginal income tax rate of the taxpayer, the taxpayer can opt for an assessment, which then leads to an application of the lower rate. Furthermore, some other exemptions of the flat withholding tax exist, e.g. for foreign interest income or private issued loans.

LOSSES

In principle, losses can be fully offset the income of the same year. However, some restrictions apply with regard to capital losses from capital investments, sales of shares or private transactions.

Losses up to EUR 1,000,000 can be used to minimise the profit of the preceding year. Further losses can be carried forward to use in the following years. Anyway the so-called 'minimum taxation rule' applies then. Up to EUR 1,000,000 of net income can be offset without restrictions; any exceeding losses may be offset against up to 60% of the net income exceeding EUR 1,000,000.

TAX RATES

In 2019, individuals were subjected to federal rates of taxation as shown in the table below.

TABLE 3

Overview of income tax rates and allowances for individuals

	SINGLE	MARRIED	TAX RATE
Basic personal allowance	EUR 9,168	EUR 18,336	0%
Progressive rates of:	EUR 9,169 – 55,960	EUR 18,337 – 111,920	14 – 42%
Tax rate as of:	EUR 55,961 – 265,326	EUR 111,921 – 530,652	42%
Highest tax rate as of:	EUR 265,327	EUR 530,653	45%

Additionally, a 5.5% solidarity surcharge is levied on the amount of tax.

Taxes on income from employment are based on the employee's monthly salary (PAYE). It is the employer's duty to deduct tax and forward it to the fiscal authorities. At the end of the year, the tax withheld throughout the year will be taken into account in the final income tax assessment.

PARTNERSHIPS AND INDIVIDUALS – TRADE TAXATION

TAXABLE PERSONS

Individuals and partnerships carrying on a trade or business are subjected to trade tax. Trade tax is collected by the municipalities, whereas the respective income is determined by the fiscal office.

TAX CALCULATION AND TAX RATE

The basis for the trade tax computation is the income for income tax purposes. But some expenses that can be deducted for income tax purposes are non-deductible for trade tax purposes and vice versa. In 2019, major adjustments include:

- A 25% non-deductibility of the sum consisting of interest payments for debts, annuities and permanent charges
- Profits of a silent partner
- 20% of lease payments for movable assets and 50% of lease payments for immovable assets
- 25% of licence payments if a threshold of EUR 100,000 is exceeded.

For trade tax purposes, the income of individuals and unincorporated companies is minimised by an allowance of EUR 24,500.

Because, municipalities have a degree of discretion when fixing the multiplier on this tax, trade tax rates vary from municipality to municipality. The other part of the effective trade tax rate is a federal base rate of 3.5%. The system of computation is fairly complicated, but the average trade tax rate is approximately 14% on the basis of a multiplier of 400%. If there is a higher or lower multiplier, trade tax rate increases or decreases, e.g. Berlin has a multiplier of 410%, Cologne 475%, Dusseldorf 440%, Frankfurt a. M. 460%, Hamburg 470%, Stuttgart 420% Munich 490%, Schönefeld (near Berlin) 240% and Zossen (near Berlin) 200%.

Because, the trade taxation is based on the income of the whole firm, a firm with permanent establishments spread over several municipalities will have the tax distributed amongst the municipalities according to a key based on the size of the payroll.

Due to the 2008 Business Tax Reform, trade tax has to be considered as a non-deductible tax expense for income and trade tax purposes from 2008 onwards. However, a part of the trade tax (the weighting factor of 3.8 on income for trade tax purposes multiplied with the federal base rate) can be deducted from the personal income tax burden of individuals/partners of a partnership.

LOSSES

Trade losses cannot be carried back; however, they can be carried forward without any time limit under the 'minimum taxation rules' (see above).

TABLE 4

Example calculation of income tax and trade tax for unincorporated companies

EXAMPLE (EUR)		
Trade tax		
Taxable income for trade tax purposes	1,000,000	1,000,000
Amount of deduction	<u>24,500</u>	
	975,500	
Assessment base (Base rate 3.5%)	34,143	
Trade tax (multiplier 400%)	136,570	-136,570
Income tax		
Taxable income before taxes	1,000,000	
Tax rate pursuant to §32a Abs. 1 S. 2 Nr. 5 German Income Tax Act		
Income tax	434,306	
Deduction of trade tax pursuant to §35 German Income Tax Act (Trade tax assessment base x 3.8)	<u>129,742</u>	
Final income tax	304,565	-304,565
Solidarity Surcharge 5.5%	16,751	-16,751
Net income		542,114

CORPORATIONS – CORPORATE INCOME TAX

TAXABLE ENTITIES

Corporations, such as stock corporations, limited liability companies etc., are subjected to corporate income tax plus solidarity surcharge.

Corporations which have their legal seat or place of management in Germany have unlimited tax liability in Germany; all income of resident corporations constitutes business income, irrespective of its source.

Corporations which do not have their legal seat or place of management in Germany are liable for tax purposes only on its income derived from German sources. Including:

- Income derived from a permanent establishment or a permanent representative in Germany
- Gains from the sale of shares in a German corporation
- Rental income
- Investment income.

The tax treatment depends on whether the tax is levied via a filing and assessment procedure (e.g. business income derived from a permanent establishment) or via a withholding tax procedure (e.g. dividends, interest, rental income from movable assets and royalties).

TAX BASES AND RATES

Since 2008, corporate income tax is payable for income and capital gains of resident corporations at a rate of 15%, regardless of whether the income is distributed or not.

A 5.5% solidarity surcharge is imposed on the corporate income tax, resulting in an effective tax rate of 15.825%.

Corporate income tax is levied of the total income of a corporation. Though, some restrictions exist with regards to the deductibility of business expenses, personal expenses, taxes, interest and dividends, the income is determined after the deduction. This includes depreciation and amortisation.

Withholding taxes have to be paid on dividends and interest payments to resident corporations at a rate of 25% plus solidarity surcharge, resulting in an effective tax rate of 26.375%. These withholding taxes are creditable against the tax liability of the recipient.

The same rates apply for non-resident corporations. However, the withholding tax rate for dividends and interest payments to these non-resident corporations may be minimised by regulations of double tax treaties or EU Directives. Furthermore, there is an additional withholding tax regulation for income subject to the tax withholding procedure.

TAX SYSTEM

As corporations are taxed as separate legal entities and independently from their shareholders, the risk of double taxation exists in cases where profit distributions are made to shareholders. Then, taxes are levied at the level of the corporation and at the level of shareholders. The aim of the corporate income tax system is to avoid or reduce such double taxation.

To avoid double taxation, a system is in place. Corporate profits are taxed at the level of the corporation and dividends are taxed at the level of the shareholders. This is done by not taking total dividend payments.

Example:

Difference between small shareholder and one person limited liability company shareholder

	SMALL SHAREHOLDER	ONE PERSON LIMITED LIABILITY COMPANY SHAREHOLDER
Company profit before taxes	100.000	100.000
Trade tax, income tax, solidarity charge	- 29.825	- 29.825
Profit after taxes	= 70.175	= 70.175
Level of shareholders		
Dividend in accordance with para 20 (1) No. 1 German Income Tax (EStG)	70.175	70.175
Capital gains taxes 25%, solidarity surcharge 5,5%		- 18.507
Distribution rate in accordance with para 32d (2) No. 3 EStG		= 51.668
Adding the taxes again in accordance with para 43 (5) EStG		+ 18.507
Taxable income		70.175
40% tax free		- 28.070
Subject to taxation		42.105
Deductions		
Para 20 (9)	- 801	
60% of income related expenses		Here assumed - 801

	SMALL SHAREHOLDER	ONE PERSON LIMITED LIABILITY COMPANY SHAREHOLDER
Capital gains tax 25%	17.343	
Income tax rate 42%		17.347
Solidarity charge 5,5%		
From capital gains tax	953	
From income tax		954
	18.296	18.301
Crediting capital gains tax and solidarity surcharge in accordance with para 36 (2) No. 2 EStG		+ 18.507
Amount refunded		206
Taxable overall burden (without church taxes)	48.121	48.126

Under the former so-called 'imputation' or 'split-rate system', a full imputation credit was granted to resident shareholders. This ended in 2001, when transitional regulations were arranged. From 2002 to 2008, a 'half-income-system' was applied at the level of shareholders. From 2009 onwards, the 'half-income-system' was replaced by the 'partial-income-system'. Now, a distinction is made between private shareholders and shares which are held as business assets.

In the case of private shareholders, a flat withholding tax on dividends is applied at a rate of 25% plus solidarity surcharge, resulting in a total rate of 26.375%. However, there are some further restrictions. For the business income of shareholders, 60% of the dividends are taxable (60% of the dividends will be included in the shareholder's personal income tax base) and 40% are tax-exempt. As a consequence, shareholder expenses related to distributed profits are deductible by 60% only.

If the shareholder is a corporation with a shareholding of 10% or more, distributed profits are exempt from taxation. However, an amount equivalent to 5% of a corporation's dividend is treated as a non-deductible business expense. Hence, only 95% of the dividend income is tax-exempt at the level of the shareholder. Expenses incurred which relate to such income are fully deductible for corporate tax purposes.

In every case, the corporation paying the dividend has to deduct withholding taxes at a rate of 25%. These withholding taxes are creditable against the tax liability of the recipient.

Payments of certain amounts to non-residents are subject to withholding taxes. These include payments such as royalties, licence fees, interest and management fees.

CAPITAL GAINS

Capital gains resulting from the sale of shares held by a corporation are fully exempt from corporate income tax. However, an amount equivalent to 5% of the capital gain is treated as a non-deductible business expense. Hence, 95% of the capital gain is tax-exempt. Except in restructuring cases where a seven years holding period can apply, there is neither a minimum participation requirement, nor any minimum holding period. Only in cases where the value of the shares has been written down tax-efficiently and has not been revalued before the sale of the shares, the capital gain is not tax-exempt.

All other capital gains are subject to corporate income tax and withholding taxes. However, up to 100% of hidden reserves resulting from the sale of real estate and buildings can be transferred to the new asset, which also has to be real estate or buildings. The transfer is allowed up to four years after the sale and the preceding year.

LOSSES

For losses the same rules (minimum taxation) apply like they do with partnerships (see above).

Anyway, any losses, which have been carried forward, will be erased when change-of-control-rules applies. If more than 50% of the shares are transferred, losses will be erased in total. This rule currently is examined by the Federal Constitutional Court, because Fiscal Courts questioned the validity of this restriction.

Losses resulting from the sale of shares are only tax deductible up to 60%. Restrictions also apply to the offset of losses derived from foreign permanent establishments.

EARNINGS STRIPPING RULES

Through the 2008 Business Tax Reform the thin capitalisation rule was replaced by the earnings stripping rule. Now, a general limit on the deduction of interest payments is given, which applies to all kinds of debt financing. According to the earnings stripping rules, interest expenses are fully deductible if they do not exceed interest income. The earnings stripping rule does not apply in cases where the net interest expenses do not exceed EUR3 million per year. If the net interest expenses are higher, these interest expenses are only deductible up to 30% of EBITDA (earnings before interest, taxes, depreciation and amortisation).

The limit rule does not apply either if any of the following conditions are satisfied:

- The company is not a member of a consolidated group (a group of companies that can be consolidated under International Financial Reporting Standards – IFRS),
 - There is one exception. If 10% of the negative interest balance go to a substantial shareholder (at least 25%) or a related party of his/her, the earnings stripping rule is applicable, or
- The equity ratio of the German subgroup is equal or higher than the equity ratio for the group as a whole. This has to be shown on the audited consolidated financial statement of the preceding fiscal year ('escape clause'). A deviation up to 2% downwards is not harmful. The definition of 'group' is the same as under the IFRS.

CORPORATIONS –TRADE TAX

TAXABLE ENTITIES

All corporations carrying on a business in Germany are subject to trade tax.

TAX CALCULATION AND RATES

In general, the same rules apply as laid down for partnerships. Nevertheless, the allowance of EUR 24,500 does not apply here.

For trade tax purposes dividends received from either resident or non-resident shareholdings, which are tax-exempt for corporate income tax purposes, are added to the profit. But, this only applies when the participation is less than 10%.

TABLE 5

Example calculation of income tax and trade tax for corporations

	EXAMPLE (EUR)	
Trade tax		
Taxable income for trade tax purposes	1,000,000	
Amount of deduction	0	
	1,000,000	1,000,000
Assessment base		
(Base rate 3.5%)	35,000	
Trade tax (multiplier 400%)	140,000	-140,000
Corporate income tax		
Taxable income before taxes	1,000,000	
Tax rate pursuant to §23 sec. 1 German Corporate Income Tax Act (15%)		
Corporate income tax	150,000	-150,000
Solidarity Surcharge 5.5%	8,250	-8,250
Net income		701,750

TABLE 6

Example calculation of income and other taxes for a shareholder

	PRIVATE (FLAT WITHHOLDING TAX) – EUR	BUSINESS (PARTIAL INCOME SYSTEM) – EUR
Dividend from corporation	701,750	701,750
Withholding tax (25%)		175,438
Flat withholding tax (25%)	175,438	
Solidarity Surcharge (5.5%)	9,649	9,649
Cash dividend	516,663	516,663
Taxable income of shareholder (60% of 701,750)		421,050
Income tax (on 421,050)		
Tax rate pursuant to §32a Abs. 1 S. 2 Nr. 5		

	PRIVATE (FLAT WITHHOLDING TAX) – EUR	BUSINESS (PARTIAL INCOME SYSTEM) – EUR
German Income Tax Act		
Income tax		173,779
Solidarity Surcharge 5.5%		9,558
Net income	516,663	518,414
(Creditable withholding tax and solidarity surcharge have been considered; church tax has not been considered)		

TABLE 7

Comparison for incorporated and unincorporated companies

	CORPORATION	UNINCORPORATED COMPANY
Profit before tax	1,000,000	1,000,000
Trade tax (multiplier 400%)	140,000	136,570
Corporation tax + solidarity surcharge	158,250	-
Income tax + solidarity surcharge in case of full distribution		<u>321,316</u>
Net income	701,750	542,114

TAXATION OF PERMANENT ESTABLISHMENTS IN GERMANY

According to German tax law, a permanent establishment is defined as an operational facility (representation office, plant, sales office, etc.) that serves to carry out business activities in Germany.

Commercial activities include all sorts of business transactions that exceed the mere preparation of business contacts or other auxiliary services. The permanent establishment has its own internal organisation and bookkeeping and could, therefore, exist as an independent commercial entity without major restructuring efforts.

Because, there are different national definitions of the term 'permanent establishment', the tax committee of the Organisation for Economic Co-operation and Development (OECD) has come up with a uniform definition (cf. article 5, OECD sample convention).

The right of international taxation is usually regulated through double taxation treaties. In most treaties, taxation takes place at the place of operations. Therefore, the contracting country does not levy any taxes on the profits of permanent establishments located in Germany.

On the other hand these profits are not taxable in the state of resident. But, losses of a permanent establishment can only be offset against positive income within the scope of the limited liability for taxes in Germany. Anyway, the limited taxpayer is allowed to carry losses back and forward within this permanent establishment.

Depending on the parent's classification the German branch is subjected to income or corporation taxes.

SOLIDARITY SURCHARGE

The solidarity surcharge on income and corporation taxes has been introduced to raise additional funds for the German reunification.

The solidarity surcharge amounts 5.5% of the respective income or corporation tax.

The surcharge applies to individuals as well as corporations, associations and conglomerations of property with limited or unlimited tax liability located in any part of Germany.

The solidarity surcharge has been introduced only as a temporary tax burden. It will be phased out eventually, although no definite time has been set by legislation yet.

OTHER TAXES

VALUE ADDED TAX (VAT)

German VAT is a general tax on the consumption of goods and services in Germany. In principle, all entrepreneurs, corporations or individuals are subject to VAT. This applies also to non-resident entrepreneurs who offer supplies or perform services in Germany.

Several regulations exist that set out whether goods or services are subjected to German VAT. The German VAT Act complies predominantly with the Council Directive 2006/112/EC (VAT Directive).

The VAT liability for goods or services can fall under one of three main categories:

- Taxable at the standard rate (currently 19%) or at the reduced rate (7%)
- Exempt
- Outside the scope of Germany.

In Germany, for some kinds of services and supplies, a reverse-charge-system is applicable, especially in the sector of real estate transactions, building and cross-border activities.

CHURCH TAX

Residents in Germany who have chosen to officially register themselves as members of the Roman Catholic or the Protestant-Lutheran church 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 is between 8–9% of an individual's personal income tax burden. Church tax is collected by the tax authorities and distributed among the churches.

Religious persons or members of other religious affiliations or groups are not obliged to pay church tax.

7 – ACCOUNTING & REPORTING

ACCOUNTING AND CORPORATE RECORDKEEPING

Adequate financial records must be kept by all businesses operating in Germany.

Books have to show clearly all commercial transactions and the financial position pursuant to generally accepted accounting principles. An outside expert has to be able within a reasonable timeframe to get an overview of the business operations and the position of the firm through looking into the books. The bookkeeping needs to be comprehensive from the beginning to the completion.

At the end of each financial year, both unincorporated and incorporated firms have to prepare their annual financial statements. This includes a balance sheet as well as an income statement.

In addition, corporations must prepare notes to the financial statement and a management report. The latter has to make references to the development of the company's main business activities. An assessment of the present situation and future developments has to be added. Statute and law determine the details which have to be included in the notes to the financial statement. These details need to give further explanation to individual items in the balance sheet as well as the income statement.

German legislation has incorporated the rules and regulations of the European Economic Community (EEC) Fourth Directive on accounting and reporting issues, the EEC Seventh Directive on consolidated accounts and the EEC Eighth Directive on account control and external auditing requirements. The last modification was made with the implementation of the EU-Fair-Value-Directive and the EU-Modernisation-Directive.

The required statutory corporate records generally include:

- The documents of incorporation
- The company articles
- The minutes of shareholders' meetings
- A register of shareholders and directors
- Prescribed accounting documents.

The prescribed accounting documents include the following:

- Commercial business records, inventories, opening balance sheets, annual financial statements, management reports, procedural instructions and other organisational documents necessary for interpreting such documents
- Incoming business correspondence
- Copies of mailed business correspondence.

Records need to be kept regularly for ten years. If the documents are needed for tax purposes, a longer period may become effective. The books shall be maintained on German territory. On the basis of an agreement with the fiscal office the bookkeeping can be done in another country.

The German Commercial Code (HGB) also prescribes the preparation of inventories for the end of every business year. The inventory has to be taken within a period consistent with orderly business practice. Certain procedures for simplifying the keeping of inventory are allowed if they are in accordance with generally accepted accounting principles. The informational value of the inventory prepared by these methods has to match the informational value of an inventory prepared on the basis of a physical count.

AUDIT REQUIREMENTS

Unincorporated companies are generally not obliged to appoint an external auditor. The audit and disclosure requirements do, however, take effect when certain size criteria are met. These are currently set at:

- A balance sheet total exceeding EUR 65 million
- An annual turnover exceeding EUR 130 million
- An annual average of more than 5,000 employees.

At least two of the above thresholds must be exceeded on three successive balance sheet dates.

The audit requirements for corporations and for a special limited partnership (GmbH & Co. KG) are specified in the German Commercial Code. The corporations are arranged in class sizes as shown in the table below.

TABLE 8

Corporation class sizes

	SMALLEST	SMALL	MEDIUM
Balance sheet total	≤ EUR 350,000	≤ EUR 6,000,000	≤ EUR 20,000,000
Turnover	≤ EUR 700,000	≤ EUR 12,000,000	≤ EUR 40,000,000
Employees	≤ 10	≤ 50	≤ 250

Smallest, Small or Medium corporations are those that do not exceed at least two of the aforementioned criteria. For Example: Medium-sized corporations are those that exceed at least two of the criteria in column two but, at any given time, do not exceed at least two of the criteria in column three. Corporations that exceed two of the criteria in column three are classified as large. The respective characteristics need to be met on two successive balance sheet dates.

Companies listed on the stock exchange, banks, insurance companies and other companies acting in the financial sector are always classified as large corporations.

The annual financial statements and the management reports of companies which are not classified smallest or small have to be examined by an external auditor (chartered accountant). Only if the annual financial statements are audited they can be adopted.

The legally required consolidated financial statement and consolidated management report of companies always need to be examined by an external auditor.

DISCLOSURE REQUIREMENTS

The legal representatives of companies must file the annual financial statements at the electronic commercial register without undue delay after its presentation to the shareholders, and not later than nine months (for small corporations, 12 months) into the following business year after the closing day. The law distinguishes again between different class sizes of companies, as shown in the table below:

TABLE 9

Type of disclosure, according to company size

	SMALLEST	SMALL	MEDIUM	LARGE
Disclosure of balance sheet	CR/FG	FG	FG	FG
Income statement	-	-	FG	FG
Notes to the financial statement	-	FG	FG	FG
Management report	-	-	FG	FG

CR = Commercial Register (Unternehmensregister)

FG = Federal Gazette (Bundesanzeiger)

Large corporations have to disclose their annual financial statements and the management report in the Electronic Federal Gazette.

8 – UHY REPRESENTATION IN GERMANY

BERLIN

UHY Lauer & Dr. Peters KG
Zimmerstraße 23
D-10969 Berlin
Germany

Phone: +49 30 22 65 93-0
Fax: +49 30 22 67 90 50
Email: berlin@uhy-berlin.de
Website: www.uhy-berlin.de

Contact: Dr. Ulla Peters at peters@uhy-berlin.de

BREMEN

Clostermann & Jasper Partnerschaft
Kleiner Ort 5
D-28357 Bremen
Germany

Phone: +49 421 16 23 70
Fax: +49 421 16 23 725
Email: info@clostermann-jasper.de
Website: www.clostermann-jasper.de

Contacts: Oliver Gampper at og@clostermann-jasper.de
Torsten Jasper at tj@clostermann-jasper.de

COLOGNE

Dr. Leyh, Dr. Kossow & Dr. Ott KG
Siegburger Straße 215
D-50679 Cologne
Germany

Phone: +49 221 36 00 60
Fax: +49 221 36 00 66 6
Email: koeln@lko.de
Website: www.lko.de

Contacts: Gunter Stoeber at gunter.stoeber@lko.de
Horst Leyh at horst.leyh@lko.de
Birgit Seidel at seidel@lko.de

FRANKFURT

UHY Wahlen & Partner
Walther-von-Cronberg-Platz 13
D-60594 Frankfurt am Main
Germany

Phone: +49 69 6605 9379 0
Fax: +49 69 66059379 99
Email: frankfurt@uhy-wahlen.de
Website: www.uhy-wahlen.de

Contacts: Thomas Wahlen at thomas.wahlen@uhy-wahlen.de
Stephanie Mannsky at stephanie.mannsky@uhy-ffm.com

HAMBURG

Clostermann & Jasper Partnerschaft
Reimersbrücke 5
D-20457 Hamburg
Germany

Phone: +49 40 530 29 65 0
Fax: +49 40 530 29 65 65
Email: info@clostermann-jasper.de
Website: www.clostermann-jasper.de

Contact: Torsten Jasper at tj@clostermann-jasper.de

MUNICH

Dr. Langenmayr GmbH
Wirtschaftsprüfungsgesellschaft
Seidlstraße 30
D-80335 Munich
Germany

Phone: +49 89 55 17 07 0
Fax: +49 89 55 17 07 49
Email: lp@dr-langenmayr.de
Website: www.dr-langenmayr.de

Contacts: Johannes Bitzer at jbitzer@dr-langenmayr.de
Edmund Weigert at weigert@uhy-deutschland.de
Thilo Rath at trath@dr-langenmayr.de

STUTTGART

Kullen Mueller Zinser Treuhand GmbH
Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft
Amundsenstraße 6
D-71063 Sindelfingen/Stuttgart
Germany

Phone: +49 7031 863 900

Fax: +49 7031 863 899

Email: stuttgart@uhy-deutschland.de

Website: www.kullen-mueller-zinser.de

Contact: Sebastian Otten at sebastian.otten@k-m-z.de

ROSTOCK

UHY Lauer & Dr. Peters KG
Gerhart-Hauptmann-Straße 14
18055 Rostock
Germany

Phone: +49 381 4 44 450

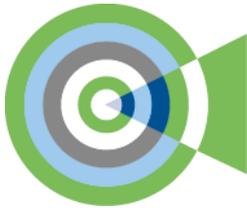
Fax: +49 381 4 44 45 29

Email: rostock@uhy-rostock.de

Website: www.uhy-rostock.de

Contact: Dr. Ulla Peters at peters@uhy-berlin.de

For current contact details, please visit: www.uhy-deutschland.de



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