

Doing business in Germany



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1. Foreword

The purpose of this guide is to assist those interested in doing business in Germany. It was prepared on information available on 1st of April 2010 and does not cover the subject exhaustively. However, this guide shall familiarize about some of the important questions that may arise. This guide is not comprehensive and when specific problems occur in practise, it will be necessary and indispensable to obtain appropriate accounting and legal advice for the given circumstances. It will however give a first overview about regulations and the legal framework and encourage doing business in Germany

There are many good reasons for doing business in Germany. Generally German law does not distinguish between foreign companies and national ones and treats everybody equally. In the following paragraph some of Germany's advantages as an ideally suited business place are pointed out:

- Germany is the leading economy in Europe - offering a large domestic market and easy access to growing markets in Eastern Europe.
- Germany is one of world's top exporters and the top exporter in Europe.
- Germany is the leading country for research and development – consequently Germany is Europe's leading patent applicant.
- Germany has an excellent infrastructure and a fortunate position in the middle of Europe. With its well-developed and reliable energy and communications infrastructure as well as a first-class transportation system Germany is number one in the logistics market in Europe.
- Germany has highly qualified, motivated, and reliable specialists and employees, well known far beyond Germany's borders.
- Germany has a comprehensive range of support programmes, reaching from cash incentives for the reimbursement of direct investment costs to incentives for labour and research and development.
- Germany has lowered its corporate tax levels significantly.
- Germany has a very efficient judiciary and civil service institutions. Intellectual property is strictly protected.

2. Country Profile

As the heart of Europe with its nine neighbours Austria, Belgium, the Czech Republic, Denmark, France, Luxembourg, the Netherlands, Poland and Switzerland Germany plays a key role in the European Economy.

Known as the land of poets and thinkers Germany now is the leading country in Europe regarding research and development. German cars, machines and technologies are well known and appreciated in the whole world. German products stand for excellent quality, reliability and innovation. Germany early recognized the importance of sustainable and environmental friendly technology and is leading in environmental technology, e.g. wind turbines and solar power energy.

Therefore, Germany strongly attracts foreign investors - a total of 22.000 foreign companies are present in Germany, including the world's 500 largest corporations.

2.1. General Information

With 82 million inhabitants, Germany is the largest and the most populous country in the European Union.

The official language is German, but English is widely known.

Time in Germany is CET (UCT+1), in summer CEST (UCT+2).

General business hours are from 8 or 9 a.m. to 8 p.m. Monday to Saturday. Sundays shops are closed.

2.2. Public holidays

New Year's Day - 1st January
Epiphany - 6th January
Good Friday (date varies)
Easter Monday (date varies)
Labour Day - 1st May
Ascension Day (date varies)
Pentecost Monday (date varies)
Unification Day - 3rd October
Reformation Day - 31st October
All Saints - 1st November
Day of Repentance (date varies)

Christmas - 25th December

Christmas - 26th December

Some federal states however may have additional public holidays.

2.3. Legal System

Germany is a federal, parliamentary, representative democratic republic with 16 states (*Bundesländer*). The basic principles of Germany's legal system are division of powers and lawful administration. Germany's justice is independent from the executive and the legislature. The constitution (*Grundgesetz*) binds all organs of the state and guarantees every individual citizen basic and human rights. Equality, freedom of speech, freedom of religion, and the protection of human dignity are just some of the constitutionally guaranteed basic principles.

2.4. Infrastructure

Germany has an excellent and highly developed infrastructure. 230,000 km road network and 37,600 km rail network connect Germany with its European neighbours. Hamburg harbour is the second-largest port in Europe and connects Germany with other continents. Accordingly, Germany is Europe's number one logistics market. In addition to its first-class transportation networks it has a sophisticated energy and communications infrastructure.

2.5. Foreign relations

Being founding member of the European Union Germany is well connected with its neighbours and partner member countries of the EU maintaining good relations with many other leading economies in the world. Germany also is member of many international organizations, e.g. the UN, the NATO, the WTO and the OSCE.

3. Business entities

Everybody - regardless his nationality or place of business - can establish a business in Germany. No minimum percentage of German shareholders in a corporation is required.

According to their needs and demands, foreign investors can choose from a variety of corporation and partnership types. Existing foreign companies have also the alternative to open a German branch office.

A foreign investor can choose between corporations, where the liability of the shareholders is limited to the corporation's business assets, including share capital, and partnerships, where the partners' liability is generally unlimited and personal.

3.1. Corporations

Corporations are independent juristic persons. Shareholders are not personally liable for the corporation's debts with their personal assets.

3.1.1. Limited Liability Company (*GmbH*)

The limited liability company (*Gesellschaft mit beschränkter Haftung, GmbH*) is the most common form of corporation in Germany. A GmbH can be established by one or more shareholders.

A GmbH is an independent legal person. The shareholders contribute to a capital stock without being personally liable for the company's debts. A GmbH is managed and legally represented by its managing director or directors.

For establishing a GmbH a minimum share capital of EUR 25,000 is needed. At the time of registration at least half of the share capital must be actually and verifiably contributed to a bank account. As a further requirement of incorporation of a GmbH, the founding shareholders need to execute the deed of formation and the articles of association in the presence of a notary.

Once registered with the commercial register (*Handelsregister*), the GmbH is an independent legal person. Before that the GmbH does not exist as a limited liability company. If conducting business nonetheless the shareholders of a not registered GmbH (*Vor-GmbH*) are personally liable for the GmbH's obligations. The commercial register application has to be signed by all managing directors of the GmbH in person in the presence of a notary.

After being established, the GmbH needs to be registered at the local trade office.

Estimated costs for establishing a standard GmbH are approximately EUR 750 to EUR 1,000 without fees for legal counsel for drafting the articles of association. The estimated time period for the formation of a GmbH is two to three weeks.

3.1.2. Limited Liability Entrepreneurial Company (UG)

The limited Liability Entrepreneurial Company (*Unternehmergesellschaft, UG*) is a relatively new company form. The minimum share capital for establishing an UG is only one Euro. The UG has the same legal nature than the GmbH and the same legal principles apply.

The final objective however is the transformation of the UG into a GmbH once the minimum capital stock of EUR 25,000 is available. For pursuing this objective, a quarter of the annual profits has to be retained until a minimum shareholder capital of EUR 25,000 is accumulated. The accumulated capital can then be converted into share capital and the UG can be transformed into a GmbH.

3.1.3. Public Limited Company (AG)

The public limited company (*Aktiengesellschaft, AG*) is the most respected company form in Germany. This company form is usually used by enterprises with a high demand for capital. As a great advantage, capital can be easily raised by issuing shares or debts, especially if the shares are dealt on the stock exchange. Even small investors can participate in the company's success as shareholders.

Like the GmbH, the AG is an independent legal person. The liability for the companies' obligations is limited to the AG's assets. As capital stock is divided into shares, the shareholders maximum risk is the amount he invested in purchasing his shares.

The AG is represented through the management board. Shareholders and supervisory board do not have direct influence on the managing board. Shares can be transferred without influencing the AG's existence.

However, founding formalities and costs are relatively high and extensive organizational obligations have to be fulfilled in day-to-day business. For establishing a stock corporation a minimum capital of EUR 50,000 is required. All founding-shareholders, the members of the supervisory board, and the management board need to sign the application for entry into the

commercial register in the presence of a notary, who files the application. The articles of association need to be certified by a notary.

3.2. Partnerships

The most important difference from partnerships to corporations is the personal commitment of the partners. In general, partners are personally liable for the partnership's debts and liabilities. Any partnership requires at least two partners but no minimum share capital.

There are several partnership forms that differ in the extent of the partners' personal liability for the partnership's obligations, the possible business purposes of the partnership as well as accounting and registration obligations.

3.2.1. Civil law partnerships (*GbR*)

German law defines a civil law partnership (*Gesellschaft des bürgerlichen Rechts, GbR*) as the undertaking of at least two natural or legal persons to pursue a mutual objective. To establish a GbR no formal preconditions or registration is required. Nonetheless, concluding the partnership agreement in writing is recommendable. If the partnership's objective is trade business, a registration with the local trade office is required.

All partners are jointly and severally liable for all debts and liabilities of the partnership with their private assets. Attention should be paid to the fact that according to German law every GbR running a commercial enterprise that requires business operations set up in a commercial manner, is considered to be a general commercial partnership (*oHG*).

3.2.2. General Commercial Partnership (*oHG*)

A general commercial partnership (*offene Handelsgesellschaft, oHG*) is very similar to the civil law partnership especially in respect to the liabilities of the partnership's debts. All partners are jointly and severally personally liable for the partnership's obligations.

An oHG must be entered into the commercial register and be registered with the local trade office. For registering the oHG with the commercial register a German notary has to file a certified and electronic application by all partners. Accounting regulations are stricter than for a GmbH and profits of an oHG are generally subject to trade tax.

Even though partners that join at a later stage can be held liable for old partnership's debts and liabilities; partners withdrawing from the partnership can be held liable for partnership's obligations incurred prior to their withdrawal for a period of up to five years after their withdrawal.

3.2.3. Limited Partnership (KG)

A limited partnership (*Kommanditgesellschaft, KG*) is similar to a general commercial partnership, but for some partners the joint and several liability for the partnership's debts is limited to their respective share.

At least one partner has to be personally liable for the KG's obligations with his personal assets. A KG is a good option for raising capital, because not all partners need to be personally liable.

The limitation of liability for the respective partners only takes effect once the limitation of the partnership has been registered with the commercial register. The application has to be made by all partners in certified and electronic form by a German notary.

3.2.4. Corporate Partnership (GmbH & Co. KG)

The corporate limited partnership (*GmbH & Co. KG*) is a very common legal form. The GmbH & Co. KG has the great advantage of restricting the personal liability to a limited liability company. All other partners are only limited partners. The GmbH & Co. KG combines the flexibility of a partnership with the limited liability of a company. GmbH & Co. KGs are mostly used by family companies and medium sized businesses. Usually, the limited partners are also shareholders of the personal liable GmbH.

The GmbH & Co. KG has to be registered with the commercial register and with the local trade office. The limited liability of the limited partners takes effect as soon as the limitation of the respective partner is entered into the commercial register. The application to the commercial register has to be filed by a notary in certified and electronic form.

3.2.5. Partnership Limited by Shares

The partnership limited by shares (KGaA) is a combination of a stock corporation and a limited partnership. It has the characteristics of a stock

corporation but has individually liable shareholders instead of a managing board.

As a main criterion of the KGaA at least one partner can be held liable for all debts and liabilities of the partnership limited by shares. Registration with the commercial register and with the local trade office is required. However, in Germany the partnership limited by shares is not a very common legal form. For establishing a KGaA a minimum share capital of EUR 50,000 is required.

3.3. Branch Office

A foreign company has the possibility to establish a branch office in Germany. The registration requirements are determined by the level of dependency the branch office has on the mother company.

A branch office with own executive powers, separate bank accounts, its own business assets and separate balance sheet, is considered to be an autonomous branch office. Such a branch office has to be entered into the commercial register. The application has to be certified and filed by a notary. Additionally detailed information on the foreign company is required, like an excerpt of the of the mother companies commercial register and the power of representation of the managing directors and the managing board including a certified translation into German.

Dependent branch offices that are still subject to the head office legal company form are not required to be registered with the commercial register; though, a registration with the local trade office is still required, if the branch conducts business.

4. Incentives

4.1. Framework Conditions of Public Funding

Germany provides various incentives to investors, regardless to their nationality. There are two different types of incentives. Firstly investment costs can be reimbursed by a number of different mechanisms, secondly operational incentives expenditures to be subsidized after the investment has been settled.

German incentives range from cash incentives, over interest-reduced loans, public guarantees to labour-related and R&D incentives.

All public funding has to be in accordance with certain criteria provided by the EU to ensure that economic growth and development can be achieved in all different economic regions within the EU. Therefore, support can be sought for “Convergence Regions”, regions that require comprehensive support in order to bridge the gap with well-developed regions in Europe and for “Regional Competitiveness and Employment Regions” that receive assistance to maintain and expand their economic competitiveness levels.

The criteria for being eligible for funding are the same for German investors as for foreign investors.

4.2. Cash Incentives

With non-repayable grants, investment costs for setting up a production facility can be significantly reduced.

The Joint Task Program issued by the Ministry of Economics and Technology grants non-repayable cash payments to investors and supports several regions primarily eastern Germany. The granted amount is based on either investment costs or assumed wage costs. For large enterprises (more than 250 staff headcount) grants up to 30 percent of eligible expenditures are possible, for small sized enterprises (less than 50 staff headcount) even up to 50 percent of eligible expenditures.

A program with the scope to promote investment activities in Eastern Germany, automatically grants investors an Investment Allowance (*Investitionszulage*), if they invest in Berlin, Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt or Thuringia. A combination with other grants is possible.

4.3. Public Loans

A lot of different programs offer loans at low interest rates and with attractive grace periods. Such loans are offered by different publicly owned and organized banks at national and federal state level.

The European Investment Bank (EIB) issues loans for large investment projects at interest rates below current market value with long-term repayment periods. Eligible for these loans are projects in the areas of economics, technology, environment, and finance. The EIB’s loans are open to large enterprises as well as small enterprises. Generally it is possible to receive up to 50 percent of investment project costs as a loan.

The different departments of the KfW Banking Group (*Kreditanstalt für Wiederaufbau*, KfW) are specialized on different target groups and financing measures. The KfW Banking Group as the operating bank of the Federal Republic of Germany provides on national level a wide range of different financing tools like promotional loan programs, mezzanine financing, and support with private equity.

At federal state level, each German state provides loan programs by its own development bank for projects within the respective state. These loans are directed at small and medium-sized enterprises (less than 250 staff headcount) and can be combined with other programs.

4.4. Labour-related Incentives

Regarding labour, different support programs exist, ranging from recruitment support, training support, wage subsidies, to on-the-job-training. These incentives are generally not dependent on company size, industry sector or investment project location.

4.4.1. Recruitment support

With its over 800 local job centres the Federal Employment Agency provides free of charge services for finding suitable staff, regardless qualification or experience level. These services include job vacancy advertising and preselecting candidates, as well as providing facilities for job interviews.

4.4.2. Training Support

Due to the fact that special knowledge on operating machinery and technical equipment is crucial, it is often necessary to train new personnel adequately before they can start working. However, the costs for these training measures can be subsidized up to 100 percent by regional program managing authorities.

4.4.3. Wage Subsidies

In Germany wages subsidies serve to support job seekers with difficulties finding a secure job (e.g. long-term unemployed).

For an employer offering a long-term contract for such a person it is possible to receive up to 50 percent of the monthly wage costs including

social benefits as a direct cash payment for a period of up to 12 months. This grant can rise up to a maximum of 70 percent of the monthly wage costs for a maximum period of 96 months if a long-term unemployed person with disabilities is hired.

However, it is recommendable to apply for these wage subsidies in advance of the work contract being signed.

4.4.4. On-the-Job Training

Different on-the-job training programs are available by the German states and the European Social Fund (ESF). It is possible to subsidize enterprises with up to 50 percent of all training costs. If an amount exceeding EUR two million is granted, the subsidy has to be authorized by the European Union.

4.5. Research and Development (R&D) Incentives

Research and development is considered as the cornerstone of German economy. Therefore, about three percent of national GDP are spent on R&D incentives each year, amounting to approximately EUR 70 billion per year.

Incentives for R&D are provided as grants, interest-reduced loans, and special partnership programs, on European, national and regional level.

To participate in R&D funding programs the applicant must define an R&D project with clear objectives. A commercialization plan must be provided with a clear time line as well as a detailed description about the objectives of the project and their realization.

Incentives mainly support fundamental research, industrial research and experimental development.

4.5.1. European R&D Grants

The EU provides grants covering up to 75 percent of project expenditures for small enterprises. Generally, only transnational projects with several project partners are eligible for grants on European level. However, a particular project partner can operate only on national level.

4.5.2. National R&D Grants

The German federal government has adopted a federal High-Tech Strategy, which reserves approximately EUR 12 billion for R&D projects. According to the High-Tech Strategy particular industry sectors with a high dependency on constant high-tech research and development are eligible to various R&D programs.

It is possible to cover up to 50 percent of eligible project costs. Moreover, the High-Tech Strategy grants can be combined with incentives for small enterprises or regional incentives for Eastern Germany.

Generally the federal government of Germany calls in a competition for R&D project proposals and grants incentives for the best projects.

Furthermore, various national incentive programs amounting to 2.6 billion Euro annually, are granted to projects without a specific technological focus. Generally small enterprises are eligible for these incentives.

4.6. Federal State Grants

The German federal states provide different grant programs for small enterprises investing in the respective state. Some programs require a particular focus on industrial clusters; others have no specific technological focus.

4.7. Various subsidy measures

Besides grants, loans and public partnerships are offered. This can be a better option because they can be used more freely. Also direct shareholding by a public investment company is possible. These options normally are tailor-made to the investors' needs.

5. Import and Export

Thanks to its favourable position in the heart of Europe, Germany is the primary transportation hub and connects the Eastern European countries with the Western European Countries as well as the South with the North. The extensive railway network and the excellent motorway network serve to interconnect German cities and allows traffic from all over Europe to transit via Germany. Hamburg harbour is the second-largest port in Europe and connects Germany with more than 900 ports in over 170

countries worldwide. Accordingly, Germany is predestined for importing and exporting goods to and from countries all over the world and especially Europe.

The import and export of goods into Germany is almost completely liberalized, no import permits or import declarations are needed for German residents and companies or partnerships with a registered office in Germany.

If certain trade and industry goods are subject to quantitative restriction (quotas) or supervision by European regulations, import licenses and surveillance documents can be obtained from the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA*)

5.1. Customs

Germany, as a member state of the European Union, is part of the European Customs Union. Member states have removed customs barriers between themselves and introduced a common customs policy towards other countries. The purpose is to remove all official restrictions preventing the free movement of goods and distortion of competition within the Common European Market.

5.1.1. European Customs Union

Goods and capital can be freely circulated within the EU. A common external tariff applies on all items of trade and industry entering the market.

Once goods have lawfully entered the Common European market they can not be subject to further customs duties, discriminatory taxes or import quotas, as they travel internally. For goods imported from third countries (non-members of the Customs Union area) common customs tariff (CCT) rates of the European Union apply. Custom rates for imported goods depend on product category and country of origin. All applicable tariff rates and rules for imported goods are catalogued in TARIC (Integrated Tariff of the European Communities). In trade with third countries, use of the 10-digit TARIC-code is mandatory in customs and statistical declarations.

5.1.2. EU Trade Agreements

The European Union concludes international agreements with other countries. On that base import tariffs and other customs are fixed. Favourable conditions are guaranteed by trade agreements, especially for goods from neighbouring, developing, and emerging economies. Free trade

agreements exist with the other countries of the European Economic Area (Iceland, Liechtenstein, and Norway) and Switzerland. Furthermore, the EU has concluded trade agreements with former British, French, and Portuguese colonies in Africa, the Caribbean, and the Pacific (ACP countries) trade and other countries around the Mediterranean Sea as well as south-eastern Europe.

5.2. Import Restrictions

Import of certain items of trade and industry is restricted and only possible under certain preconditions (e.g. previous permission); for some products import is absolutely prohibited.

Compliance with import and export restrictions is ensured by customs administration. Restrictions are especially imposed on goods that could endanger the population, the environment, the fauna and flora, and the international security. Furthermore, some domestic industries and branches are protected by European law. Therefore, quantitative imports restrictions are imposed on certain goods and market access is controlled. For importing such goods licenses and surveillance documents are required.

Furthermore, customs administrations protect intellectual property rights. Goods infringing on intellectual property rights can be confiscated and destroyed, the offender can be prosecuted or fines can be imposed.

5.3. Export Restrictions

In general, the export of goods is not restricted. Restrictions can be only imposed on goods affecting the security and foreign political interests of the Federal Republic of Germany. Such goods are mainly weapons, armaments and dual-use items, like software and technology that may be used for civil and military purposes.

The export of dual-use items from the European Union has been harmonized by European law. The BAFA has the task to control whether a good is subject to export licensing and if a license may be granted.

Export restrictions can also derive from embargo resolutions adopted by international organisations like the UN or the EU.

6. Regulatory environment

German law is very trade friendly. Day-to-day business activities are generally not subject to restrictions. Generally, German law does not distinguish between German and foreign nationals and is applied equally.

Germany has a very reliable and efficient law system, administration, and judicial system. Holders of intellectual property can rely on protection of their rights by patent laws, regardless the holder's nationality. The commercial register provides legal certainty for business partners by giving access to all legally relevant information about a business or a company.

6.1. Business registrations

6.1.1. Trade office and craftsmen's card

All commercial business in Germany must be registered with the local trade office (*Gewerbeamt*) of the municipality where the business is located. , Generally no special business permission is needed. Only some businesses, depending on the business purpose, require a business permit or authorization. Other businesses dealing with craftsman's services might require registration with the register for craftsmen (*Handwerksrolle*) and membership in the chambers of industry and commerce.

6.1.2. Commercial register

An entry into the commercial register is mandatory for all business formations with exception of civil law partnerships, freelance professionals, and dependent branch offices.

The commercial register provides all legally relevant information about business persons or companies, like name of the owner, personally liable partners of a partnership, liability of the limited partners, share capital of a GmbH, general powers of attorney, institution of insolvency proceedings, and de-registration of companies. Since 2007 the electronic commercial register has been launched and offers online access to the register information.

Applications to the commercial register can only be filed in certified and electronic form by a German notary.

6.2. Intellectual Property

Research and development is one key sector of Germany's economy. Consequently, intellectual property is well protected in Germany. The owner of intellectual property can prohibit unauthorized use of his intellectual property.

6.2.1. Patents

A patent protects new technical inventions and allows benefiting commercially from an invention. Their owners enjoy the exclusive right to use the invention commercially for a limited period. Only the patent owner is entitled to make use the patented invention and has the right to decide if third parties are allowed to use the invention commercially.

Applications for a patent can be filed for technical inventions, which are new, involve an inventive step, and are industrially applicable. A patent guarantees its owner protection for 20 years. The German Patent and Trade Mark Office (*Deutsches Patent- und Markenamt, DPMA*) grants patents on German level, the European Patent Office based in Munich offers intellectual property protection on European level. The European Patent Office provides a uniform application procedure for individual inventors and companies seeking patent protection in up to 40 European countries.

6.2.2. Trademarks

A trademark is a distinctive sign or indicator used to identify goods and services of particular traders. Only signs that are suitable for distinguishing products or services of a particular enterprise from that of other companies are eligible for trade mark protection. A trademark is a type of intellectual property, and typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements, but it may also consist of numbers or even colours and sounds.

In Germany trademark protection must be entered into the register of the German Patent and Trade Mark Office. A sign may also be subject to trade mark protection if the sign is well-known or if it is intensively used in trade.

A registered trademark guarantees the owner the right to use the trademark exclusively for the protected goods and services. The owner of a trademark

has also the right to transfer the trademark to third parties or to grant others a license.

Unlimited renewal of trademarks is possible. If the renewal fee is paid regularly every ten years, a trademark can be used forever. Otherwise the registration will be cancelled.

6.2.3. Licenses

The right to use a patent or a trademark can be assigned to a third party by granting a license allowing the exclusive or partial use of the patent or trademark.

6.3. Property and Building

Purchasing property generally is not subject to permissions. However, communities might have a right of pre-emption.

Constructing buildings requires a building permit. This also applies for alteration, demolition, or change in use of a building. An application for a building permit can be made at the proper building authority. A building permit generally has to be granted, if the project complies with the planning and building regulations and is not infringing other laws like water laws or immission protection law.

6.4. Environmental Law

Environmental protection is a core issue in Germany. As a consequence projects and production plants must comply with environmental protection laws like immission protection law and water law. According to German law immissions are defined as emissions, e.g. air pollution, sounds, tremor, light, heat, radiation and similar environmental effects, affecting humans, animals, plants and items. For industrial facilities causing such emissions an immission control permit is needed.

7. Tax

Germany's tax law offers a flexible and efficient tax system with moderate rates.

7.1. Taxation of Commercial Business

Companies are subject to corporation income tax (*Körperschaftsteuer*), partnerships to personal income tax (*Einkommensteuer*). All commercial

business operations, regardless their legal company form, have to pay trade tax (*Gewerbsteuer*).

7.1.1. Corporate Income Tax

Corporate Income Tax for Corporations amounts to a rate of 15 percent on all taxable corporate earnings. It applies to both retained and distributed profits. The profits (e.g. dividends) on shares are subject to final withholding tax (*Abgeltungsteuer*), which amounts to 25 percent.

If a German subsidiary pays out dividends to a foreign parent corporation, generally a withholding tax (*Kapitalertragsteuer*) of 25 percent is due. The deducted withholding tax can be refunded up to 2/5; according to eventual double taxation agreements between Germany and other countries even a higher reduction is possible.

In addition to the corporate income tax, the solidarity surcharge (financing instrument for the German reunification) amounting to 5.5 percent of the 15 percent of the corporate income tax needs to be paid. All in all a company has to pay a rate of 15.825 percent of all corporation taxable earnings as income tax and solidarity surcharge.

7.1.2. Taxation of Partnerships

Partnerships themselves are not subject to corporate income tax. The partnerships' taxable earnings are taxable through the personal income tax (*Einkommenssteuer*) of each shareholder. The tax rate depends on the individual tax rate of the respective shareholder. The solidarity surcharge of 5.5 percent of personal income tax is added according to the individual personal income tax rate of every partner.

To avoid a progressively rising personal income tax rate, partnerships can apply for a flat taxation rate of 28.25 percent plus solidarity surcharge on retained earnings - leading to a flat taxation rate of 29.8 percent equalling the tax burden for corporations.

7.1.3. Trade Tax

Municipalities levy trade tax (*Gewerbsteuer*) for all business operations - regardless of their legal company form.

The German trade tax rate is calculated according to the tax assessment rate of 3.5 percent, which is multiplied with the municipal trade collection rate set individually by every municipality of Germany.

The total trade tax rate is at minimum seven percent. The average trade tax rate in Germany was 13.58 percent in 2008. No solidarity surcharge is levied on trade tax payments.

For partners or sole proprietors, personal income tax can be reduced by 3.8 times of the trade tax base amount.

7.1.4. Final Withholding Tax

Natural persons have to pay final withholding tax (*Abgeltungssteuer*) on their current income from capital (e.g. dividends, interests, income from transactions). The tax rate amounts to 25 percent. Including the solidarity surcharge the total tax burden is approximately 26.4 percent.

7.2. Individual Persons

Natural persons with permanent residence in Germany are subject to income tax. The German tax law distinguishes between different income forms, e.g. wages, rental income, income from business establishments or investment income. Not the whole profit is subject to income tax. Expenses for realisation of profits and extraordinary expenses can be deducted from the taxable income. In Germany tax rates depend on the taxable income and go up on a progressive scale.

The personal income tax rate starts at 14 percent for an annual income exceeding the tax-free allowance and rises progressively up to a tax rate of 45 percent. For the assessment period 2010 the tax-free allowance amounts to EUR 8,004; 42 percent are levied on taxable income exceeding EUR 52,882, and 45 percent are charged on taxable income exceeding EUR 250,401.

Every natural person has to submit a tax return to the tax authorities every year. Persons having only wage income or income from interest are exempted.

Employers pay the wage tax for their employees in advance. Expenses in connection with the wage income are not deducted. Therefore, the employee has the possibility to hand in a tax return and to get a tax refund on their income tax, if the tax they owe is less than the sum of the total amount of already paid taxes.

7.3. Value Added Tax (*Umsatzsteuer*)

7.3.1. Domestic Business

The standard VAT rate of 19 percent is just below European average. For convenience goods and services needed on a day-to-day basis (like food, newspapers and public transport) a lower rate of seven percent applies. Some services including banking, healthcare and non-profit-work are VAT exempt.

As companies themselves have to pay VAT on the goods and services they require for their business, they have the possibility of input tax reduction (*Vorsteuerabzug*), allowing them to deduct VAT from their input tax.

7.3.2. International Business

According to European law and the European Customs Union no customs and no other restrictions are imposed on trade within the EU. For goods traded between different EU member states however the recipient of the goods has to pay acquisition tax. The acquisition tax rates are identical with the VAT tax rates of the country, where the recipient of the goods is based. The recipient can reclaim acquisition tax like regular VAT.

Import turnover tax (*Einfuhrumsatzsteuer*) is levied by the customs authorities for goods imported from non-EU states. The rates correspond to VAT rates of 19 or 7 percent depending on the types of goods and services. By presenting the necessary import documents with customs proof of payment (import declaration), the paid import turnover tax can be deducted as input tax.

Exports are exempted from VAT.

7.4. Taxation of Property

7.4.1. Real Estate Tax

Every property owner in Germany is liable to pay real estate tax (*Grundsteuer*). Two different tax rates apply for property used for agriculture and forestry (real estate tax A) and for land for building or property with buildings (real estate tax B).

For calculating the tax burden for property, the assessed value of the property is multiplied with the real estate tax rate and the municipal collection rate.

The particular tax rate depends on the type of real estate. The general tax rate for real estate tax B is 0.35 percent; a lesser tax rate applies only to detached houses and semidetached houses. The tax rate for property used for agriculture and forestry is 0.6 percent.

The appropriate tax rate is multiplied with the municipal collection rate, which is stipulated by each municipality. In 2008 the average multiplication factor for real estate tax B was 400 percent, for real estate tax A 296 percent.

7.4.2. Real Estate Transfer Tax

Every change of ownership of domestic real estate is subject to real estate transfer tax (*Grunderwerbsteuer*) of 3.5 percent of the purchase price.

7.5. Tax Deduction

The German tax system offers various options for tax deductions to lower the income subject to taxation.

In the following paragraph some options for tax deductions are pointed out:

7.5.1. Loss Carry-Back and Loss Carry-Forward

Companies can carry back losses for one year up to an amount of EUR 511,500. Losses can also be carried forward up to an amount of EUR 1,000,000 and there is no time restriction for carrying losses forward. For losses exceeding the amount of EUR 1,000,000 at least 40 percent of the taxable income must remain subject to taxation. Consequently taxable income exceeding EUR 1,000,000 can only be reduced up to a maximum of 60 percent with such losses.

7.5.2. Interest Payments

German tax law allows deducting operating expenditures from profits. Generally this applies to interest payments as well, but if the interest payments exceed the amount of interest earnings by more than

EUR 1,000,000, payments can only be deducted up to the amount of 30 percent of the EBITDA (earnings before interest, taxes, depreciation and amortization).

7.5.3. Tax depreciation

The income subject to taxation can be reduced with depreciation for assets. For straight-line depreciation the purchase price is divided by the estimated time of usability of the asset.

7.5.4. Fiscal Unit Concept

Controlling parent companies can pool profits and losses for taxation purposes. However, profits and losses from German subsidiaries are considered as tax-relevant income and losses to the German parent company. As a precondition the controlling parent company must be based in Germany and hold more than 50 percent of the voting rights of the subsidiary company. As a second precondition a profit and loss pooling agreement between parent and subsidiary entity with duration of five years is required; this has to be registered with the commercial register.

8. Finance

Germany is the financial centre of Europe. Frankfurt am Main is Europe's financial centre, hosting the German Central Bank (*Deutsche Bundesbank*), the European Central Bank and the Frankfurt Stock Exchange (*Frankfurter Börse*). Many foreign banks and insurers maintain offices in Germany.

8.1. Banks

German banks are either organized as private enterprises or as public corporations. There are various types of banks, like cooperative banks, private banks or saving banks.

German banks are mostly specialized on different clients:

- Private customers:
 - Routine business: credit and investment business, payment transactions

- Private banking: investment counselling and asset management for wealthy private customers
- Business clients
- Federal States and administrative units
- Banks

Most German banks offer a full service and are not specialized as clearing banks, merchant and commercial banks or industrial banks.

The main banks in Germany are Deutsche Bank, Commerzbank and Bayern LB.

8.2. Stock exchange

The Frankfurt Stock Exchange (*Frankfurter Wertpapierbörse*) is recognized worldwide for trading indices like DAX, DAXplus, CDAX, DivDAX, LDAX, MDAX, SDAX, TecDAX, VDAX and EuroStoxx 50.

The origins of the Frankfurt Stock Exchange go back to the 9th century and a free letter by Emperor Louis the German allowing to hold free trade fairs. In 1585 a bourse was established to set up fixed currency exchange rates.

The Frankfurt Stock Exchange is one of the biggest and most efficient exchange places in the world. It is owned and operated by Deutsche Börse, which also owns the European futures exchange Eurex and clearing company Clearstream. The Frankfurt Stock Exchange has over 90 percent of turnover in the German market and a big share in the European market.

The Frankfurt Stock Exchange is developing quickly and progressively. An example of this is the electronic trading system Xetra developed for European and international trade. Some European partner-exchanges adopted the Xetra trading system, like the Vienna Stock Exchange, the Irish Stock Exchange and the Budapest Stock Exchange in 2003. The Shanghai Stock plans to use the Xetra trading system as well.

Thanks to its modern and innovative attitude, the German stock market has become of great interest to foreign investors and market participants. Nowadays about 47 percent of the 300 market participants in Frankfurt have an international background.

8.3. Movement of Capital

There are no restrictions on moving capital in and out of Germany. However, for the purpose of preventing money laundering all incoming and outgoing payments from abroad exceeding an amount of EUR 10,000, or equivalent payments with valuables, must be reported to the German Central Bank (*Bundesbank*). Transactions within Germany are not subject to the reporting obligations.

9. Labour

German labour is much valued all over the world due to excellent knowledge and skill. Germany offers highly qualified, motivated, and last but not least very reliable workers and specialists. Germany's workforce is excellently educated to meet companies' needs. Over 285,000 students graduated from over 400 universities and universities of applied sciences in 2007; 25 percent of Germany's labour force is graduated from universities or vocational colleges, 53 percent are skilled craftsmen and technicians.

The Federal Employment Agency (*Bundesagentur für Arbeit*) provides recruitment services free of charge. Of course, alternatively private employment companies offer their support in finding suitable staff.

9.1. Employment forms

Employers can choose the most suitable employment model from the different options according to their needs.

9.1.1. Employment Contract

A standard employment contract is not time restricted and usually includes a probation period of up to six months. Contracts can be limited to a maximum of two years. If the total length of the contract does not exceed 24 months a limited contract can be extended three times. In general, German labour law is employee-friendly; termination of the employment contract often requires compliance with particular terms of termination, and other preconditions.

9.1.2. Temporary Employment

Temporary employment agencies offer service contracts for hiring staff. The hirer has only a contract with the temporary employment agency and not with the hired employees. Therefore, the hirer does not have to comply

with German labour law regarding terms of cancellation and other requirements.

9.1.3. Mini and Midi Jobs

Mini and midi jobs are jobs with salaries below EUR 400 or between EUR 401 and EUR 800 per month. These are especially advantageous for employees as they are exempted from social security contributions for the mini job and only pay reduced employee social security for midi jobs.

9.1.4. Freelance Work

Freelancers can either be contracted for particular projects or to support personnel in busy times. They have to take care of their medical and pension insurance by themselves. Therefore, employers do not have to pay social security contributions for freelancers.

9.2. Payment

Payment is generally freely negotiable. Minimum wages apply only for some particular industries like general construction trade, roofing and tiling, painting and varnishing, demolition work, building cleaners, electricians and postal delivery services.

Overtime work in general must be remunerated or compensated through free time. This however can be waived to a certain amount by individual contract.

9.3. Working hours

German labour laws allow working hours up to a maximum of 48 hours per week. Under certain circumstances as an exception a total of 60 hours per week is permitted.

10. Visa

10.1. Citizens of the EU and the EEA

For citizens of the European Union, the European Economic Association, and Switzerland no visa or work permits are required for entering, staying and working in Germany. If the stay exceeds 90 days a registration with the local registration office (*Einwohnermeldeamt*) is required, which will then issue a residence permit.

10.2. Other Citizens

Generally speaking, all other foreigners need a visa for entry and stay in Germany. For some countries the EU has abolished visa requirements for semi-annual visits of up to three months (*Schengen-Visa*).

The type of visa required depends on the purpose of the stay:

- Due to the situation on the German labour market a general ban was imposed on recruitment. As a consequence a residence permit for working purposes generally requires a concrete job offer. The grant of the residence permit depends on the needs of Germany as a business location.

Highly qualified persons though may be granted a residence permit without a concrete job offer.

- Self-employed persons may be granted a residence permit if they invest a minimum of EUR 250,000 and create a minimum of five jobs. However, these criteria are not mandatory and a residence permit can be granted nonetheless on a case-to-case basis, depending on the business's financial basis and the economic or specific regional interest.

The Federal Foreign Office (*Auswärtiges Amt*) and the German embassies and consulates provide concrete information on the particular visa requirements and assist with applications.

11. Useful contacts

Federal Ministry of Economics and Technology
(*Bundesministerium für Wirtschaft und Technologie*)

www.bmwie.de/en +49 30 20 129

Federal Foreign Office
(*Auswärtiges Amt*)

www.auswertiges-amt.de +49 30 18 170

Federal Ministry of Labour and Social Affairs
(*Bundesministerium für Arbeit und Soziales*)

www.bmas.bund.de +49 30 18 527 0

German Chambers of Commerce Abroad
(*Deutsche Auslandshandelskammern*)

www.ahk.de +49 30 20 308 0

Customs-Info-Centre
(*Zoll-Infocenter*)

www.zoll.de/infocenter/index.html +49 351 44 834 530

Federal Institute for Real Estate
(*Bundesanstalt für Immobilienaufgaben*)

www.bundesimmobilien.de +49 37 787 0

Federal Central Tax Office: Tax Information Centre
(*Bundeszentralamt für Steuern: Steuerliches Info-Center*)

www.steuerliches-info-center.de

German Patent and Trade Mark Office
(*Deutsches Patent- und Markenamt*)

www.dpma.de +49 89 21 950

European Patent Office
(*Europäisches Patentamt*)

www.epo.org +49 89 23 990

KfW Banking Group
(*KfW Bankengruppe*)

www.kfw.de

+49 69 74 310

EIB European Investment Bank

(*Europäische Investitionsbank*)

www.eib.org

Federal Employment Office

(*Bundesagentur für Arbeit*)

www.bundesagentur fuer arbeit.de

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