Tax Aspects of Doing Business in Germany 2024

This brochure has been designed for foreign investors in order to give them an initial introduction to the tax and accounting environment in Germany.

A. Forms of Doing Business in Germany

1. Representative office

Under German law there is no representative office. If you want to do business in Germany without creating any tax liabilities you should not

- qualify as an entrepreneur for VAT purposes in Germany,
- act as an employer in Germany,
- register a branch in the German commercial register and
- meet the criteria for a permanent establishment as set by the German General Tax Code or the applicable Double Taxation Treaty (DTT).

In case your business activity is not considered as one of the above mentioned and you don't have income from German sources, your income will not be liable to taxes on income in Germany. Profits and losses will be included in the books and financial statements of the foreign entity in its home country.

2. Registration for VAT purposes only

Foreign companies must register in Germany if they make sales whose place of performance is in Germany. Exceptions are possible and apply to e.g. intra-community acquisitions between entrepreneurs in the European Union when both parties involved use their VAT ID number.

Once registered monthly, quarterly or annual VAT declarations have to be submitted to the German tax office. VAT must be paid and refund of input VAT can be reclaimed easily.

Foreign companies from outside the EU who trade on online platforms must register for VAT purposes in Germany before they start their online trades with German customers. The trading company needs a delivery company / carrier company in Germany who acts as importer in Germany in the name of the trading company to fulfil the declaration obligation for import VAT and customs duties in Germany.

B2C sellers dispatching their goods from a single country are not required to register for foreign VAT and complete multiple VAT filings in countries where they are selling if they opt to simply complete and file an OSS (One-Stop-Shop) filing alongside their regular domestic VAT return that will list all their pan-EU sales. The seller then remits the VAT due to their home VAT authority, which then forwards the taxes to the appropriate countries. Non-EU sellers may also apply to use the OSS regime, and just need to nominate any single EU state to register and file in.

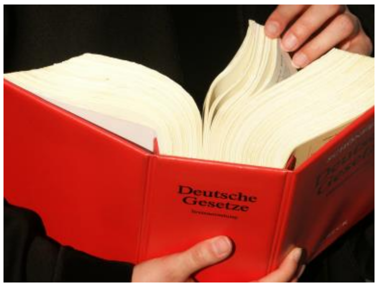
3. Registration as employer only

If foreign companies employ staff working in Germany, they must register as employer, perform payroll accounting and submit monthly reports to the social security carriers for all employees from the first day of their activity in Germany. There are exceptions for business trips (A1 or GME certificates may be needed) or for secondments with some countries under certain conditions.

Unless the tax office asks for wage tax from the employer, the employees have to inform their residence tax office and pay advances on their expected income tax. Benefits in kind such as company car, company flat, insurance contributions, stock options or free meals can also raise wage tax or social security liability.

4. Permanent Establishment

No matter if you go for an autonomous registered branch or a dependent branch office, that is not entered in the commercial register, your German business activities will be qualified as a permanent establishment (P.E.) tax-wise if there is "a fixed place of business or plant in Germany that has a certain degree of organisational and effective independence or is for more than merely a temporary purpose". Examples can be found in Sec. 12 of the General Tax Code and in the respective DTT. Since the legal definition is rather vague, it often creates problems to identify if there is a German P.E. or not. In case of any doubts the German tax authorities will mostly assume there is a P.E. in Germany. It is often underestimated that also a manging director can create a place of management or a person that acts on behalf of a foreign entity can create a P.E. which has to calculate profits and pay taxes according to German tax law.



If there is a Double Taxation Treaty (DTT), profits taxed in Germany could be exempt from taxation in the parent company´s home country or some taxes paid in Germany could be offset against the amount of tax imposed by the home country. It is of particular importance, that all intercompany activities are made at arm´s length, ruled preferably in writing before they come into effect and are accurately documented because this is often subject to critical review in tax field audits.

5. Subsidiary company

<u>5.a. Choosing the best legal form</u>

The type of corporation favoured most by foreign investors is the **GmbH** (private limited company) because it is much easier to handle than an AG but still has a very good reputation. The minimum nominal share capital is 25,000 €.

An **AG** **(**public company) is only recommended for companies, which may like to use the German stock market or where shares are transferred frequently.

We strongly advise not to use **Mini-GmbH's** (**UG's**), with a minimum share capital of 1 € or more because of it bad reputation.

Partnerships are rarely used by foreign investors. The annual profit or loss is automatically allocated to the shareholder's income at the end of the business year without raising any withholding tax. However, they may open interesting tax options as they are treated as hybrid vehicles in Germany.

<u>5. b. Legal set up of e.g. a GmbH</u>

Normally a lawyer performs some pre-checks and then drafts the (bi-lingual?) articles of association. The company needs to be set up in front of a German civil law notary, who will apply for registration of the company at the local court once at least 50% of the subscribed share capital has been paid in on a bank account that is owned by the new company.

Registration of a GmbH can be done in one or two weeks, but if non-EU-shareholders are involved, it may take several months. Buying a shelf company will speed up the process of legal registration but doesn't help speeding up the process of fiscal registration.

Don't forget to report the company and its ultimate beneficial owners to the transparency register and keep it up to date. All intermediaries such as banks, lawyers and chartered accountants are obliged to check if it is in line with what you tell them during the KYC/AML process and with what has been entered in the commercial register.

<u>5.c. Opening a bank account</u>

Be prepared that this can be a challenge, esp. the KYC and AML checks or if you have a US background (FATCA!) or come from a black- or grey-listed country. The majority of German banks now require that the managing director lives in Germany and speaks German.

<u>5.d. Fiscal and trade registration</u>

In order to get a German tax number, a very detailed questionnaire needs to be completed and must be submitted to the tax authorities together with many documents.

Trade registration must be filed with the local municipality. A rental agreement for a permanently available office space (no letterbox) and a labour contract with the managing director is often required. A tax auditor may want to see the office and ask the manager about the business strategy before a tax number is granted to avoid mere letterbox companies.

<u>5.e. Storage of data</u>

All tax-relevant data that is computerized has to be in a format electronically accessible to the German tax authorities upon demand. Original receipts generally have to be stored in the European Union. Storage outside the EU needs to be permitted by the local tax office beforehand and requires a written application and meeting certain conditions. Storing paperless requires a storage software that meets certain conditions and a detailed procedural documentation.

5.f. Audit and publication of financial data

Financial statements of corporations must only be audited if they exceed two out of the following three size criteria on two consecutive balance-sheet dates:

- 6 (7.5)* million € balance-sheet total
- 12 (15)* million Euros turnover
- 50 employees in average.

* = The numbers in brackets must be applied on annual financial statements for financial years starting after 31 December 2023 but can voluntarily be applied for financial years starting after 31 December 2022.

Annual **publication** (or deposit for micro corporations) **of financial data** is mandatory for all corporations and for such partnerships exceeding certain size limits and lacking a natural person with unlimited liability as shareholder. Substantive penalties for late filing may be assessed. Please note that third parties such as competitors or clients can view the published financial data in the internet.

B. Taxation of Corporations

Corporations with a registered office or its central place of management in Germany are liable to **unlimited taxation in Germany**. The following tax rules will be applicable:

1. Taxes on income

Depending on the location, usually **23%-33% of the income** is paid for Municipal Trade Tax, Corporate Income Tax and Solidarity Surcharge.

2. Dividends

The **25%-withholding-tax** can be exempted or refunded according to EU Parent/Subsidiary Directive or when a DTT allows this.

3. Losses of the German corporation

a **Loss carried backwards:** limited to one year and 1 million € (10 million € in 2020- 2023 due to the pandemic); not granted for trade tax.

b **Loss carried forward:** unlimited in time and amount. The first 1 million € can be fully deducted, with any excess losses being relieved at 60% (70% for financial years 2024-2027).

c **Fiscal unity**: It is possible to add profits and losses of several corporations registered in Germany if all requirements for group relief are met beforehand. The willingness of German tax authorities to accept losses of foreign subsidiaries is still very limited although EU court decisions put them under pressure.

4. VAT

Regular tax rate is 19%; reduced tax rate is 7%.

VAT liability depends on the kind of service rendered. Especially when there are cross-border deliveries and services, VAT problems often arise and getting tax advice before business is conducted is recommendable in order to avoid problems.

5. Transaction and wealth taxes

- Buying land and buildings – 3.5% -6.5% of purchase price, depending on the federal state, with a tendency to increase rates.
- Lease of land and buildings – none
- Stamp duty – none
- Shares – none
- Immaterial goods – none
- Stock-exchange transfer ta – none
- Wealth tax –none

6. Transfer pricing

All companies with intragroup deliveries or services must prove that their transfer prices are at arm's length upon request within 30 days and in each tax field audit. Companies that exceed intragroup deliveries of 6 million € or intragroup services of 600,000 € p.a. with a German entity involved, must also present a written transfer pricing documentation (local file) on request/ automatically once a tax audit has been announced (the latter applies from 2025 onwards)

Companies that are part of a multinational group of companies and had a total turnover (not consolidated and not limited to intra-group supplies/services) of at least 100 million € in the previous business year, must present a master file.

If the company fails to present or the documentation is not acceptable, higher profits, imputed dividends or contributions can be assessed by the tax authorities and late filing penalties can be assessed of up to 3,75 million Euros.

C. Taxation of Individuals

1. Domicile

Individuals with a **permanent residence** in Germany, **or those who stay more than 183 days per year,** are liable to unlimited taxation of their worldwide income in Germany. Tax Relief is possible if stated in a DTT. Foreigners who receive income from German sources are tax liable with that income.

2. Income tax rates in 2024

The personal exemption for income tax amounts to EUR 11,604. Income above that is taxed with a progressive **rate of 14%-45%**. The highest marginal income tax rate of 45% applies for taxable income above EUR 277,826 for singles and EUR 555,652 for married couples. Investment income is taxed with a flat rate of 25%. If applicable, **5.5% solidarity surcharge** and 8% or 9% for **church tax**, each of them on the income tax amount, will be added.

Average income tax rates

Annual taxable income €	Average tax rate single %	married %
20,000	8.8	0.0
40,000	18.7	8.8
70,000	26.9	16.9
100,000	31.4	21.8
300,000	38.7	34.9
500,000	41.2	37.8
1,000,000	43.1	41.2

3. Payroll taxes

Payroll tax will be **deducted at source by the employer if he has a permanent establishment in Germany**. The tax rate depends on the income of the employee. A personal income tax return may have to be filed by the employee for each calendar year. Payroll tax amounts withheld by the employer are credited to the payable income tax of the individual.

4. Social security contributions

Employer and employee pay **about 20% of the gross salary as social security contributions** each, up to the upper limit, which is 62,100 € annually for health insurance and 90,600 € in West Germany annually for statutory pension and unemployment insurance. Exemptions are possible for foreigners working in Germany for a limited period of time (provided they remain in the social security system in their home country), managing directors who hold a majority of the share capital, and employees whose wages exceed the above-mentioned limits.

5. Inheritance/Gift tax

This tax applies if there is an acquisition by reason of death, gifts inter vivos, earmarked gifts or endowments and the testator, donor or foundation is a resident in Germany or domestic German property is accessioned by foreigners. There are exemptions/different evaluations for certain kinds of assets and personal exemptions of up to 500,000 €. Tax rates range from 7% to 50%.

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