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# Investment in Germany 2023 – Law & Tax

An overview of German taxation regulations concerning different types of enterprises as well as a summary of conditions to be fulfilled.

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# Table of contents

- 1 Introduction ..... 4**
- 2 Types of enterprises in Germany..... 4**
  - 2.1 Formation of a dependent branch (plant location) ..... 4**
  - 2.2 Formation of an independent subsidiary ..... 4**
  - 2.3 Formation of a subcompany ..... 4**
- 3 Formation of a limited liability company..... 5**
  - 3.1 Shareholders..... 5**
  - 3.2 Company agreement..... 6**
  - 3.3 Capital..... 6**
  - 3.4 Appointment of the elements ..... 7**
  - 3.5 Registration of the company ..... 8**
  - 3.6 Functionality of the limited liability company ..... 8**
  - 3.7 Last important changes of company law ..... 9**
    - 3.7.1 Limited liability entrepreneurial company ..... 9
    - 3.7.2 Introduction of model protocols..... 9
    - 3.7.3 Simplifications for the establishment of the limited liability company (GmbH) ..... 10
- 4 Year-end account and audit..... 10**
- 5 Business Taxation ..... 11**
  - 5.1 General Rules on the Taxation of Company Income ..... 11**
  - 5.2 Partnerships and Sole Proprietors ..... 11**
    - 5.2.1 Taxation of the partnership ..... 11
    - 5.2.2 Taxation of the partners ..... 12
    - 5.2.3 Reinvestment reserve ..... 12
  - 5.3 Corporations ..... 12**
    - 5.3.1 Taxation of the corporation ..... 12
    - 5.3.2 Taxation of the shareholders ..... 13
    - 5.3.3 Gains from the sale of corporate stocks (private assets) ..... 15
    - 5.3.4 Hidden distribution of profits ..... 15
    - 5.3.5 Interest deduction ceiling ..... 15
    - 5.3.6 Loss offsetting ..... 16

5.3.7	Tax relief for electric mobility .....	16
<b>5.4</b>	<b>Value Added Tax.....</b>	<b>17</b>
<b>5.5</b>	<b>Taxation of Managing Directors, Officers with Statutory Authority (Deputized Officers) as well as Employees – Income-taxation overview – .....</b>	<b>17</b>
5.5.1	Place of Residence in Germany .....	17
5.5.2	Place of Residence outside Germany .....	17
5.5.3	Place of Residence in both countries .....	18
<b>5.6</b>	<b>Double Taxation Treaties and German foreign tax law .....</b>	<b>19</b>
<b>5.7</b>	<b>Overview: Other business-related taxes.....</b>	<b>20</b>
5.7.1	Real estate tax .....	20
5.7.2	Real estate transfer tax.....	20
5.7.3	Energy tax.....	20
5.7.4	Electricity tax.....	20
5.7.5	Inheritance and gift tax .....	20
<b>6</b>	<b><i>Social insurance</i> .....</b>	<b>21</b>
<b>6.1</b>	<b>External managing director / employees .....</b>	<b>21</b>
<b>6.2</b>	<b>Associate-manager .....</b>	<b>22</b>
<b>6.3</b>	<b>Social Security Contributions .....</b>	<b>22</b>
<b>7</b>	<b><i>Law of residence</i>.....</b>	<b>23</b>
<b>7.1</b>	<b>Residence title .....</b>	<b>23</b>
7.1.1	Limited residence permit.....	23
7.1.2	Permanent settlement permit.....	24
<b>7.2</b>	<b>Limited residence permit for self-employed persons.....</b>	<b>24</b>
<b>7.3</b>	<b>Limited residence permit for employees .....</b>	<b>25</b>
<b>7.4</b>	<b>Limited residence permit for family reasons.....</b>	<b>26</b>
<b>7.5</b>	<b>Short term residence in Germany.....</b>	<b>26</b>
<b>8</b>	<b><i>Checklist for business start-up (for non-EU-citizens)</i> .....</b>	<b>27</b>

# 1 Introduction

Foreign investment is the fuel for growth, value creation, jobs and prosperity, which is why countries around the world are competing to create attractive incentives for investors. Germany has been amongst the top recipients of foreign direct investment in the previous years.



This brochure provides an overview of the possibilities and the regulations in Germany which should be observed when investing in the domestic market.

## 2 Types of enterprises in Germany

Foreign companies have several prospects to establish a new business. For the entrepreneurial activity in Germany a subsidiary, a branch or a subcompany are worth considering.

### 2.1 Formation of a dependent branch (plant location)

Dependent branches are companies which depend on the head office in every respect (e.g. entrepot). Normally, there is no separate accountancy and no separate bank account. The managing director of the branch has no important competences. The branch does not

have to be registered in the Commercial Registry.

### 2.2 Formation of an independent subsidiary

The subsidiary is more than just a dependent division or an auxiliary place (depot, sales office, etc.) but it is not an independent company like a subcompany, although it is spatially, economically and organisationally separated from the head office. It has its own management, accounting and financing and its own business assets. The subsidiary has to be established for a particular length of time and moreover it must have its own company management.

The subsidiary must be registered in the Commercial Registry at the location of the head office. In case of a foreign head office the subsidiary has to be registered in the place of its management. There are costs incurred for the registration.

### 2.3 Formation of a subcompany

With the establishment of a subcompany a legally independent company unit is created. The legal basis of the process depends on the form of organisation you have chosen. The subcompany operates under its own name and is obligated to prepare an independent financial statement. The establishment regulations, the registration of the business and the registration in the Commercial Registry conform to the particular German law and need to be considered by the foreign incorporator.

Individual enterprises, business partnerships and capital companies can be considered as forms of organisation. It depends on the particular preferences of the incorporator in respect of the costs, the liability, the administration effort and the investment of other persons as to which form of organisation is the right one.

The foundation of a corporation implicates several legal requirements. While it may seem complicated at first it is particularly important to prepare and think through the single steps to ensure a certain degree of security for the shareholders/investors as well as the debtors due to the limitation of liability for the invested capital and the possibility of founding it by only one associate.

On the one hand there is the limited liability company (Gesellschaft mit beschränkter Haftung – GmbH) and on the other hand the stock corporation (Aktiengesellschaft – AG).

As the limited liability company is the most simple and least intricate form of a corporation in Germany and furthermore the embodiment is very flexible, the formation of a limited liability company shall be illustrated below.

### 3 Formation of a limited liability company

The absolute precondition for the formation of a limited liability company is the company agreement among the shareholders and the raising of the capital.



### 3.1 Shareholders

The limited liability company can be founded by one or more shareholders, whereas internal as well as external natural and legal persons as well as partnerships (e.g. general partnership, limited commercial partnership) and civil-law associations can be shareholders.

The founding shareholders personally – in case of legal persons as shareholders their managing director – are required to get the company agreement notarised by presenting in front of a notary with an ID or a passport. Furthermore the GmbH has to be prepared for the registration in the Commercial Registry. In case a foreign company founds a limited liability company its existence has to be proven to the German notary and the Commercial Registry with appropriate documentation such as Articles of Association, Business License and Registration Certificate.

The founder or the person authorised to represent the founding company (Managing Director, General Manager, and CEO) can give its authority to a confidant in case he cannot personally appear at the notary in Germany. The certified translated power of attorney has to be submitted during the notarisation. The external notary's signature has to be certified either at the German embassy or has to be annotated with the apostille of the responsible court.

This complex establishment procedure can be avoided by a so called "shell acquisition" which offers the possibility to start the business activities immediately. A shell acquisition is the purchase of an already existing limited liability company, which has been founded solely for this purpose. In case the company to be purchased has already engaged in business activities the risk of taking over unknown liabilities of the alienator has to be acknowledged. Our company offers those shell acquisitions for costs of approximately € 2,500.00 plus the costs for the deposited share capital.

### 3.2 Company agreement

The shareholders are extensively free concerning the matters of the company agreement. That means the requirements of the external shareholder can be considered to the extent that there is no contravention of any compelling prescriptions of the limited liability company law.



The company agreement has to be notarially certified and it has to contain the following information: company and registered office of the limited liability company, company's object, amount of the original share capital, amount of the deposits which have to be paid towards the original share capital by every shareholder (original share capital). Furthermore it is recommended to make an arrangement concerning the following matters: financial year, duration of the company and dissolution, nomination of the managing director(s) scope of power of representation, decree of the shareholders, convening of company general meeting, distribution of the votes, disposal of shares, heredity of shares of a business, preparation of the year end closing, distribution of profits, collection of shares of a business, retirement and contention, cost of foundation, exoneration of the self-contracting prohibition for the director(s), arbitration clause, restraint of competition clause.

In respect to the company's name the shareholders are extensively free. It can derive from the object of the enterprise, the name of one or more shareholders or it can also be composed of fancy names. It needs to be considered that the company name has to contain the additional

specification GmbH, respectively limited liability company and that no other registered company with the same name already exists. As an injunctive, relief for new founders is granted to the beneficiary of a brand- or company name nationwide, the innocuousness of the name should be checked before the registration in the Commercial Registry. The revision of firms registered at the same local jurisdiction can be requested at the responsible chamber of commerce and industry. The chamber of commerce and industry in Frankfurt also checks nationwide registered company/brand names, if requested.

The limited liability company can pursue every purpose which is not prohibited by law. The purpose has to be described clearly in the company agreement.

The registered office is also arbitrary, however there has to be a real spatial relation to the chosen place (e.g. the place of the management or the place of the administration or the permanent establishment).

### 3.3 Capital

The original share capital of the limited liability company amounts to at least € 25,000. One quarter of the original share capital, at least 12,500 €, has to be paid in immediately. The remainder can be paid in on request of management. It has to be considered that the associates are personally liable for the amount of capital invested which has not yet been deposited. We recommend to pay the share capital in full at the time of foundation to avoid this risk.

The original share capital can be paid in monetary form or in the form of contribution in kind. In case of contribution in kind it needs to be considered that it is to be effected in full. Moreover the shareholders have to demonstrate the recoverability of the contribution in kind in form of a special establishment report. If ascertained later that the recoverability was not existent the associates will be liable.

In case the original share capital will be paid in cash it has to be deposited to a company's account. Usually this can only be opened by presenting the certificate of registration to the bank. However, some banks allow the possibility to open an account for "the company during formation" for the phase of formation and for the purpose of the proof of deposit towards the notary and the Commercial Registry.



It is advisable to open a bank account. Normally the following documents have to be submitted to the bank:

- Company agreement and establishment authority (if the articles of association are signed by authorised representatives) - either the original or a certified transcript.
- Valid passport or identification card of the limited liability company's director as well as the shareholders' resolution or another appointment document of the managing directors as original or certified transcription
- If the managing director is not appointed yet, all shareholders have to attend the opening of the bank account on presentation of the identification card or rather a passport.
- Visa/residence permit of the management or the shareholders

### 3.4 Appointment of the elements

The limited liability company has two necessary elements: on the one hand the managing director and on the other hand the shareholders' meeting. By means of the company agreement additional elements can be created, for instance an advisory board.

Only natural absolutely capable persons can be considered for the position of the managing director. One or more persons can be appointed managing director. The appointment will occur by containing it in the company agreement or by the resolution of the shareholders and it can be abrogated at any time. The managing director's name has to be registered in the Commercial Registry.

The managing director can represent the company by himself/herself or along with the other managing director(s). The exclusive agency authority has to be registered in the Commercial Registry. Moreover, the management board can appoint an authorised representative who has the right to represent the company. He/she also has to be registered in the Commercial Registry. The power of procuration extends to all judicial and extrajudicial legal transactions the business of a company implicates. For the sale and charging of premises, the power of procuration applies only when the authorisation has been extended specifically to this matter. The authorised representative is not authorised to appear as legal representative or element of the company towards a third party or the shareholders. Moreover, the power of procuration can be given in such a way that more than one (in the majority of cases two) authorised representatives or only one authorised representative along with one managing director can represent the company together.



### 3.5 Registration of the company

With the registration in the Commercial Registry the limited liability company comes into existence as a legal person. The registration has to be effected in written form by the managing director at the locally responsible county court. The acting person (managing director or shareholder) is personally liable for all business dealings which took place before the registration on behalf of the company.

The registration in the Commercial Registry requires the name of the company, the registered office, the business purpose, the amount of the original share capital, the date of the conclusion of the articles of association, the managing director and his power of representation to be indicated.



The following documents have to be submitted for the registration in accordance with § 8 GmbHG:

- Company agreement and establishment of authorities (if the articles of association are signed by authorised representatives) either the original or a certified transcript
- Shareholders resolution or another appointment document of the managing directors as original or certified transcription
- List of shareholders (name, first name, date of birth and place of residence) with the amount of invested capital per shareholder.

- If necessary, contracts about contributions in kind and special establishment report
- Documents about the value of the contribution in kind (e.g. rates, list of quotation, price lists etc.)
- Assurance about minimum performance (the court may only demand submission of deposit receipts or other documentary evidence if there are substantial doubts as to whether the capital has been properly raised)
- Assurance of every managing director concerning the non-existence of appointment hindrances
- Domestic business address
- Indication of the power of representation
- Signature of the managing directors
- The costs for the formation of a limited liability company depend on the amount of the capital.

For the formation of a limited liability company with the minimum original share capital of € 25,000 allowed by law, costs of at least € 850 should be expected.

### 3.6 Functionality of the limited liability company

The managing director assumes responsibility for the management of the limited liability company. Every natural person, whether a native or a foreigner, can be appointed managing director. Special qualifications are not required, provided that for the activity of the limited liability company no special precondition is necessary, which implies a particular personal agreement (e.g. the title of master craftsman in trade). In

this case only a managing director can be appointed who possesses a corresponding qualification.

The managing directors are obligated to comply with the instructions of the shareholders. They represent the company inwards and outwards. The associates are not managing directors but they manage the company's business affairs. Thus there is neither a third party liability in the field of debts nor an obligation to compensate losses of the company which accrued while managing. Nevertheless the managing directors are obligated to manage the business affairs with adherence to certain business standards. Should they fail to do so internal claims for damages of the company can arise. It needs to be stressed that the managing directors are liable for the company's taxes. In case of payment difficulties the managing directors have to make sure that the creditors, in particular the financial authorities, are being satisfied proportionally.



The control of the managing directors is effected through the shareholders. The managing directors have to inform every shareholder about matters of the company upon request and they have to allow them access to the accounts and scripts.

### **3.7 Last important changes of company law**

On November 1<sup>st</sup>, 2008, the Act to Modernise the Law Governing Private Limited Companies and to Combat Abuses came into force (Gesetz

zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen – MoMiG).

#### **3.7.1 Limited liability entrepreneurial company**

In addition to the established form of the limited liability company, the limited liability entrepreneurial company [Unternehmergesellschaft (haftungsbeschränkt) – UG] has been introduced, in particular to attract more start-ups. The company name has to contain the additional specification UG (haftungsbeschränkt) or entrepreneurial company (haftungsbeschränkt) to inform the business partners about the smaller amount of capital..

The limited liability entrepreneurial company (UG) constitutes an alternative form of the limited liability company for new set-ups and is of particular interest for capital sensitive founders of new businesses who only need a small amount of start capital. The limited liability entrepreneurial company (UG) is not an entirely new legal structure, but rather an alternative form of the limited liability company (GmbH) which can be formed without the need for a certain minimum nominal capital at the outset. The share capital can amount to between € 1 and € 24,999. However, this type of a limited liability company cannot distribute profits in their entirety. This is intended to enable the company to gradually save the minimum nominal capital required for development into the normal form of limited liability company (€ 25,000). Nevertheless, the registration may occur when the share capital is completely deposited. Contributions in kind are excluded.

#### **3.7.2 Introduction of model protocols**

For straightforward standard set-ups (involving, inter alia, formation by cash subscription and a maximum of three shareholders), two model protocols requiring notarial recording can be used. Setting up a limited liability company is easier when a model protocol is used. This is achieved primarily as a result of the fact that

three documents – the shareholders' agreement, the appointment of the company director and the list of shareholders – are combined in just one document.

Furthermore, using a model protocol to set up a limited liability entrepreneurial company with a small amount of nominal capital leads to a genuine saving of costs, due to a privilege granted under the law governing costs.

### **3.7.3 Simplifications for the establishment of the limited liability company (GmbH)**

On January 1<sup>st</sup> 2018 the deregulation law (Deregulierungsgesetz 2017) came into effect. This law provides several simplifications for the establishment of a one-person-GmbH. In case of a formation of the limited liability company with one shareholder who is also the only managing director the original share capital amounts to € 35,000,00, of which 50 % has to be paid in immediately in monetary form. There is no option for a payment by contribution in kind.

The process does not require a notary, the bank identifies the founder in the process of opening a company account. Subsequently a standardised statement of establishment and the registration with the company register have to be transmitted online.

The federal government of Germany wants to attract start-ups by simplifying the legal process. If you need further information or consultation about starting your own start-up in form of a limited liability company we will assist you with all legal, financial and organizational questions.

## **4 Year-end account and audit**

The limited liability company is obligated to keep accounts. At the end of every year the limited liability company has to draw up a balance sheet as well as an income statement quoted in

Euros and in German. In addition the explanatory notes and a management report should be added to these documents. In consideration of the principles of adequate and orderly accounting, the year-end closing is to give a precise overview of the financial situation and position as well as the result situation which reflect the real circumstances.

For mid-sized and big limited liability companies it is imperative that a Chartered Accountant or a certified auditor executes the year-end audit.



Furthermore the limited liability company has to fulfil the publicity regulations. Thus small limited liability companies are obligated to submit condensed financial statements together with compendious notes to the electronic Federal Gazette. Mid-sized companies have to submit a condensed annual balance sheet and profit and loss statement, as well as compendious explanatory notes and a management report, a certificate of audit and, if necessary, the report of the governing body.

Big limited liability companies are obligated to submit the whole year end closing without any abbreviations as well as the certificate of audit and the report of the governing body to the electronic Federal Gazette.

Whether a company is small, mid-sized or big depends on total assets, annual sales and the number of employees.

## 5 Business Taxation

### 5.1 General Rules on the Taxation of Company Income

A company's tax status primarily depends on whether or not it's incorporated. Corporations are treated as taxable entities and are subject to corporation tax (Körperschaftsteuer), trade tax (Gewerbesteuer) and solidarity surcharge.

Partnerships (non-corporate entities like Offene Handelsgesellschaft – OHG, Kommanditgesellschaft – KG and Gesellschaft bürgerlichen Rechts – GbR) are however not taxable entities for corporation - or income tax purposes. The income determined at the level of the partnership is allocated to the individual partners. The partners are then subject to income tax. The partnership itself is just subject to trade tax.

### 5.2 Partnerships and Sole Proprietors

#### 5.2.1 Taxation of the partnership

The only company-related tax payable by partnerships and sole proprietors is the trade tax (Gewerbesteuer). The taxable item of the trade tax is each resident's trade or business in Germany. As a trade income tax the trade tax is linked to the profit of the company.

The concept of profit under the trade tax is not identical to the same term in corporation tax law or income tax law. The peculiarity in the calculation of trade income to be mentioned is that, in the case of sole proprietors and partnerships, all payments to the partners (salaries, interest on shareholder loans, etc.) are included in profit. The rate of taxation for trade tax may differ from one municipality to the next because the municipalities have the right to fix the rates of assessment for municipal trade tax within certain limits. The trade tax burden lies between 10 % and 17 %.



The liability for municipal trade tax is less of a burden because it can be offset against the income tax. This results in a significant reduction of the overall tax burden.

The following is a simplified example of the calculation of the trade tax:

<b>Profit of a Company</b> (determined by Income /Corporation Tax)	400,000.00 €
<b>+ / - Trade tax additions / reductions</b> (after consideration of the new exemption)	+ 100,000.00 €
<b>= Trade earnings</b>	= 500,000.00 €
<b>- Tax exempt-amount for individuals and partnerships</b>	- 24,500.00 €
<b>= Trade earnings</b>	= 475,500.00 €
<b>x Basic rate of tax</b>	x 3.5 %
<b>= Base amount</b>	= 16,642.50 €
<b>x Multiplier (e.g. Düsseldorf)</b>	x 440 %
<b>= Trade tax</b>	= 73,227.00 €

The basic rate of tax for all businesses is 3.5 %. Trade tax is not a deductible expense.

## 5.2.2 Taxation of the partners

Taxes on profits from partnerships and sole proprietors are levied directly on the partners. It makes no difference whether the profits were distributed as dividends to the partners or remained in the company. If the partners are natural persons taxes are levied in accordance with the progressive income tax table.

The highest tax rate for income tax at present is 45 %.

If the partners are non-residents they are subject to limited taxation (beschränkte Steuerpflicht), which means only their German income is subject to income tax.

If the shareholder is a company limited by shares with its registered office and/or management outside Germany, it is also only subject to limited taxation if it is partner in a partnership, such as the OHG or the GmbH & Co. KG, with a permanent establishment in Germany or if it operates the same alone as a dependent organisation. The corporation tax rate at present is 15 %.

Payable on top of the income- or corporation tax amount resulting from the above percentage rates is a "solidarity surcharge" (Solidaritätszuschlag) of 5.5 % of taxes payable, which is used to finance the German reunification process. It is not due until a certain assessment basis is reached. From 2021, there will be a significant increase in the threshold amounts up to which no solidarity surcharge is levied on income tax. The exemption limit of previously € 972 or € 1,944 (single/collective assessment), up to which no solidarity surcharge is already levied today, will be raised significantly. In future, no solidarity surcharge will be levied if the income tax payable is less than € 16,956 or € 33,912 (single/collective assessment). Above this limit, a so-called mitigation zone kicks in, in which the solidarity surcharge is not levied in full, but is gradually brought up to the full rate of 5.5 %. On very high incomes (above the new

mitigation zone), the previous solidarity surcharge remains unchanged. This is the case if taxable income exceeds € 96,820 (single persons) or € 193,641 (married persons).

## 5.2.3 Reinvestment reserve

Sole proprietors and partnerships in which no corporation is participating can transfer capital gains up to € 500,000.00 (in case of a partnership for each partner) from the sale of shares in corporations which have been included in the fixed assets for at least the past 6 years without any tax effects in the business year of sale or in the following two years through formation and transmission of a reserve into newly acquired

- shares in corporations
- depreciable moveable assets
- buildings.

Unused reserves must be liquidated no later than after 4 years, which increases the profit. Furthermore the profit must be increased by 6 % of the taxable half of the amount to be liquidated for each full business year during which the reserve exists.

## 5.3 Corporations

### 5.3.1 Taxation of the corporation

Every company limited by shares with a registered office in Germany has, as such, unlimited tax liability. Companies limited by shares are first of all liable for the above-mentioned trade tax (Gewerbesteuer), whereby there is normally no tax-free allowance for such companies and no progression in the rate of taxation.

Furthermore, a corporation is liable for corporate tax. The corporation tax rate is 15 % at present. In addition to the corporate tax the full solidarity surcharge of 5.5 % of the corporation tax will be levied.

Thus, for a corporation you have to calculate a total encumbrance of close to 30 % depending on the place of residence.

In case the corporation distributes profits to the associates a capital gains tax (25 %) of the disbursement is charged. This tax must be withheld by the distributing corporation and paid to the taxation authorities regardless of the shareholders nationality/location. In case of the corporation tax a solidarity surcharge of 5.5 % of the capital gains tax will be levied additionally.

### **5.3.2 Taxation of the shareholders**

For a company limited by shares, corporation tax plus solidarity surcharge is levied (the sum remaining can be distributed to the shareholders). With regard to the taxation of the shareholders it is differentiated between natural persons, partnerships and sole proprietors as well as corporations. Under certain conditions an exemption from capital gains tax is possible.

#### **5.3.2.1 Natural persons as shareholders**

Natural persons with their residence or customary abode in Germany are subject to the unlimited income tax liability with the consequence that their entire world income is subject to the taxation in Germany.



Since 2009, for natural persons, income from capital assets, particularly interest, dividends and profits from sales transactions, is subject to a flat-rate withholding tax of 25 % and solidarity surcharge of the full 5.5 %. The tax is deducted

at source. In this respect natural person as shareholders no longer have a duty to declare said income. If the investor's personal income tax rate is below that of the flat-rate tax, assessment and thus taxation at the lower personal tax rate may be opted.

The flat-rate withholding tax of 25 % has to be applied to income earned from the disposition of private property on which capital gains accrued after December 31<sup>st</sup>, 2008.

Natural persons who neither have their residence nor their customary abode in Germany are liable for limited income tax only. Thus only the profits earned in Germany are taxable in Germany. The taxation is normally regulated by a double taxation treaty. Usually the shareholder receives dividends from the corporation, those are taxed in Germany and exempted from tax in another country. Also for natural persons the German tax and the capital gains taxes are subject to payment only once in accordance with the terms of the respective double taxation treaty. The tax credit and/or reimbursement of the tax conforms in turn to the respective national law or the respective double taxation treaty.

#### **5.3.2.2 Partnerships and sole proprietors as shareholders**

From January 1<sup>st</sup>, 2009, the so-called partial-income-method applies. 60 % of the sum is subject to the personal rate of income tax (partial-income-rule). 40 % remains tax-free.

The capital gains tax of 25 % and solidarity surcharge (full 5.5 % of tax) are credited against personal income tax. For external associates the tax credit/reimbursement is generally defined by the respective double taxation treaty with Germany.

Attention should be paid to the fact that only 60 % of the expenses economically connected with the dividends may be deducted as business or income-connected expenses.

#### Taxation in accordance with the partial income rule

40 % of the dividends received from corporations are tax-exempt.

60 % of the expenses economically connected with the dividends may be deducted as business or income-connected expenses, regardless of whether the income was generated in the same assessment period.

In general 25 % capital gains tax plus solidarity surcharge is to be withheld from the dividends (including the tax-exempt amount under the partial income rule). The capital gains tax is credited against the income tax liability, the withholding of tax is generally definitive, unless tax exemption is provided by virtue of a tax treaty. If so a certificate of exemption has to be requested.

#### 5.3.2.3 Corporations as shareholders

If a domestic corporation receives a dividend it is tax-free, whereas 5 % of the dividend is treated as a flat non-deductible business expense. The actual business expenses, however, are fully deductible. The capital gains tax withheld on the disbursement as well as the solidarity surcharge accounted for can be credited

against the corporation tax payable by the corporation in Germany.

Foreign legal persons are only subject to the limited corporation tax liability. That means that in Germany only the profits earned domestically are subject to taxation. The taxation of these earnings as well as the amount of the tax normally results from the respective double taxation treaty with Germany. If a foreign company receives dividends from the German corporation these dividends will generally be taxed in Germany and exempted from taxation by the other contracting state. Because of the withheld capital gains tax the German tax is compensated. The tax credit and/or reimbursement of the German tax abroad is defined by the respective national law or the respective double taxation treaty.

However, according to parent-subsidiary directive, it is also possible not to withhold any capital tax by the German subsidiary, in case the European parent company applies for it at the German Federal Tax Office.

## Simplified Example of the tax burden on payment of dividends:

Corporation			
Profit before tax	100,000.00 €	100,000.00 €	100,000.00 €
- Trade tax (e.g. multiplier 400 %)	-14,000.00 €	-14,000.00 €	-14,000.00 €
<u>- Corporation tax (15 % on 100,000.00 €)</u>	<u>-15,000.00 €</u>	<u>-15,000.00 €</u>	<u>-15,000.00 €</u>
Profit after tax	71,000.00 €	71,000.00 €	71,000.00 €
Shareholder	Corporation	Sole Proprietor (e.g. 45 %)	Individual (e.g. 45 %)
Dividend in the case of full distribution	71,000.00 €	71,000.00 €	71,000.00 €
Thereof tax-free (95 % / 40 % / lump sum)	<u>-67,450.00 €</u>	<u>-28,400.00 €</u>	<u>801.00 €</u>
Taxable (5 % / 60 % / Div. less lump sum)	3,550.00 €	42,600.00 €	70,199.00 €
- Corp./Income/Cap.-tax (without trade tax)	(15 %) - 532.50 €	(45 %) - 19,170.00 €	(25 %) - 17,549.75 €
<u>+ Corp. tax / Income tax-free dividend</u>	<u>+67,450.00 €</u>	<u>+28,400.00 €</u>	
Dividend after tax	70,467.50 €	51,830.00 €	53,450.25 €

Please note that for simplification solidarity surcharge (5.5 % of corporation tax respective income tax) has not been considered in the table above.

### 5.3.3 Gains from the sale of corporate stocks (private assets)

Since 2009 40 % of the capital gains from the sale of shares in corporations held as private assets (not shares created through contribution) is taxable as of the time of reaching a direct or indirect minimum participation of 1 % within a period of 5 years before the sale (partial-income rule).

Provided that the participation is less than 1 % the capital gain is taxed with the flat withholding tax (tax rate 25 % or personal income tax rate).

### 5.3.4 Hidden distribution of profits

The contractual relationships between a corporation and its shareholders are taken into account for the purpose of determining the level of

taxable income. These obligations include, inter alia, salaries and interest on partner loans to the partners which qualify as operating expenses and therefore reduce taxation. However, an arbitrary fixing of such payments to partners is not possible. In general, the sum may not exceed the sum which would be paid for similar services to persons not holding shares in the company. Any amount exceeding this figure is deemed to be a hidden distribution of profits which will raise the profit of the company as well as the dividends of the shareholders.

### 5.3.5 Interest deduction ceiling

Tax relief on loan interest for corporations, sole proprietorships and partnerships which are part of a group is restricted in certain cases by the introduction of an interest deduction ceiling. Interest expenses are fully deductible in the amount of the interest earned in the same financial year.

Furthermore, the deduction is limited to the extent that the amount of the remaining interest



expense exceeds 30 % of EBITDA (earnings before interest, tax, depreciation and amortisation). An unused EBITDA can be carried forward five years. Non-deductible interest expenses may be taken into account in subsequent years when calculating the profit of the enterprise within the scope of the interest deduction ceiling.

### **Exceptions:**

#### **Exemption limit:**

The deduction of interest payable is not limited if the difference between interest expenditure and interest income is below the exemption limit of 3,000,000 €.

#### **Group clause:**

Enterprises which are not part of a group are not covered by the interest deduction ceiling except in cases of detrimental equity holder borrowing in the case of incorporated enterprises.

#### **Escape clause:**

Depending on the amount of the equity ratio of the enterprise compared to the equity ratio of the group, an unlimited deduction of interest payable is possible in certain cases, the interest deduction ceiling does not apply.

### **5.3.6 Loss offsetting**

Another difference between companies limited by shares and partnerships and/or sole proprietors is the treatment of losses. Corporations can only set off losses against profits of the same company, whereas losses of partnerships and/or sole proprietors always only affect the income tax of the partners and can be offset against other positive income in the same year.

All losses that cannot be set off in one year are fixed at the end of the year by a special assessment and carried forward to the new year. This prevents the losses from perishing.



The only exception is that a limited partner (Kommanditist - limited partner of a limited partnership - Kommanditgesellschaft) who has a negative capital account is denied the unlimited set-off of losses; in his/her position as a limited partner he/she can offset losses incurred through his/her position as a limited party only up to the amount of his/her liability as limited partner in his income tax return. Losses up to 1,000,000 € may be carried back to the immediately preceding assessment period. Loss carry-forwards which may be carried forward indefinitely may only be used to offset up to 60 % of the total amount of income after exceeding an amount of 1 million €. This is the so-called minimum taxation. With respect to trade tax the same limitations apply as for income tax purposes. However, a loss carry-back is not possible.

### **5.3.7 Tax relief for electric mobility**

The Federal Government of Germany is expanding the tax measures to promote electromobility. In order to further implement the goal of environmentally friendly mobility, the following regulations will apply in the future:

**Commercial vehicles:** For purely electric delivery or other commercial vehicles and electrically operated cargo bikes, a special depreciation of 50 percent will be introduced in the year of purchase - in addition to the regular depreciation. The regulation applies from 2020 and is limited until the end of 2030.

**Company car:** In the case of company car taxation, the assessment basis for private use of a

company electric or externally rechargeable hybrid electric vehicle will be halved from January 1, 2019 until the end of 2030.

Charging device: The electric charging of an electric or hybrid electric vehicle in the employer's company is tax-free until the end of 2030. The same applies to the temporary leasing of a company charging device for private use.

A further element in the promotion of environmentally friendly mobility are incentives for the increased use of public transport and bicycles in the form of tax-free use of a job ticket or company bicycle.

## 5.4 Value Added Tax

The goods and services rendered by the company are normally subject to Value Added Tax in Germany. The Value Added Tax currently amounts to 19 %. A reduced tax rate of 7 % presently still applies for particular goods (mainly food, books and since 2010 overnight stays in hotels). Goods within the European Union and export goods are free of tax.

For the computation of the Value Added Tax (VAT) which is to be paid to the tax authorities the limited liability company can deduct the VAT of goods and services invoiced to the company from other companies as input tax.

## 5.5 Taxation of Managing Directors, Officers with Statutory Authority (Deputized Officers) as well as Employees – Income-taxation overview –

The following observations apply to managing directors

- of companies limited by shares in the Federal Republic of Germany;

- of undertakings with sole proprietors and partnerships in the Federal Republic of Germany provided the managing director is not also the owner or co-owner of the company.

Since this concerns the taxation of natural persons in general, these statements are equally valid for e.g. authorized officers and employees.

### 5.5.1 Place of Residence in Germany

If a managing director is a resident in Germany only, he is subject to unlimited taxation (s.a.). The income tax deduction procedure will be applied to the monthly payment of salary. The employer is obligated to withhold the tax from the salary and to pay it to the taxation authorities. The withheld tax can be credited against the income tax liability at the end of the year.

### 5.5.2 Place of Residence outside Germany

If the managing director's sole place of residence is outside Germany the right to levy taxes on income earned by him as managing director passes under the majority of Double Taxation Treaties to the Federal Republic of Germany if he is employed there. German law assumes that the management of a GmbH is always located at the company's registered office. The Federal Republic of Germany is also authorised to levy taxes if one of the three following conditions is met:

- the managing director resides in the Federal Republic of Germany for more than 183 days of the year;
- the managing director receives his salary from the German company;
- the managing director's salary is charged to the German company.

If the managing director has neither a place of residence nor usual place of residence in the Federal Republic of Germany he is subject to

limited taxation only, taxes being levied by deduction of income tax. Taxation procedures for persons subject to only limited taxation normally end with the deduction of income tax, i.e. no refund procedures are subsequently possible. Any exemptions are stipulated in Double Taxation Treaties. Criticism by the European Court of Justice of German legislation may lead to a harmonisation of taxation for nationals and non-nationals - at least for the territory of the EU.

### 5.5.3 Place of Residence in both countries

If a managing director has a place of residence in both countries he is subject to unlimited taxation in both countries. The assignment of all tax sources depends on where the person's centre of life's interests are, that is to say to which country he has the closer personal and economic ties.

Income tax-overview 2019

#### Tax rates and personal exemption

Personal exemption	9,744 €
Maximum tax-rate	45 %
from a taxable income in the amount of	274,613 €

#### Allowances (p.a.)

Employee standard deduction	1,000 €
Depositor's standard deduction (Sparer-Pauschbetrag)	801 €
Expenses for pensions	102 €
Tax exemption for pensions:	1,900 €
19 % of the pensions received, plus additional allowance of	504 €

Child allowance or child subsidy	5,460 € for each child  2,628 € for the first and the second child, 2,700 € for the third child; 3,000 € for the fourth and more children)
Child care allowance	2,928 € for each child  Account is taken for children under 18 years old, under 21 years old who are unemployed within the meaning of the code of social law (Sozialgesetzbuch III), under 25 years old, who are still in professional training, as from 25 years old, only in case of helplessness due to disability.
Tax relief for single parent	4,008 € for single parent families, with one child living at home and for which the parent is eligible for the child subsidy or child allowance  This amount increases by 240 € for every further child
Educational allowance	924 € for children aged 18 and over in professional training and living away from home.

#### Travel expenses/Vehicle Use

Expenses for travel between the residential home and the place of work may be deducted as income-connected expenses. For each full km (simple distance) € 0.30 can be deducted, up to € 4,500 p.a. in the event of using a personal vehicle or a company vehicle made available free of charge a higher amount is also permissible.

For business travel € 0.30 per /km can be deducted for each full km driven. If a company car is allocated to the employee which can be used for private purposes as well, this is a payment in kind which is taxable income. In addition the distance between home and place of work and

the distance to the family which lives at another place are taxable income.

Private use of a company vehicle free of charge	
For vehicles which are used more than 50 % of the time for business related purposes (necessary business assets) the taxable value in use is determined as a percentage of the domestic list price at the time of the registration date plus any extras and value added tax.	
Value in use	1 % per month
Travel between residential home and place of work	0,30 € per km (simple distance)

**Withholding tax for construction works**

In certain cases, the party receiving construction works in Germany is obliged to withhold 15 % from the consideration (remuneration including VAT) for the account of the party providing the service.

**5.6 Double Taxation Treaties and German foreign tax law**

In the event of activities at an international level the question arises as to whether these activities should be carried out abroad through an independent legal entity, for example a GmbH, or through a permanent establishment. If there is a decision to set up an independent legal entity abroad there are many different ways of doing so but these are restricted by double taxation treaties and German Foreign Tax Law (Außensteuergesetz). Germany agreed on double taxation treaties with over 80 countries which are based on the OECD model treaty.



Under the majority of double taxation treaties only such terms can be agreed between affiliated companies that would be agreed between non-affiliated companies. Otherwise this would lead to profit adjustments which, under certain circumstances, could lead to double taxation.

§ 1 of the German Foreign Tax Law allows all income to be adjusted to take account of reductions resulting from the differences between those terms agreed with closely associated persons in other countries and those which would have been agreed with third parties. Internal transfer prices in particular must be fixed at levels which would be agreed on between non-affiliated third parties. This general principle often causes difficulties because there may be no comparable products or the distribution of business functions in affiliated companies may be different from the one that would normally exist between non-affiliated third parties.

Generally speaking, it can be said that the same scope exists when fixing internal transfer prices as it exists in general business relations or arises from the situation on the market. The main possibilities in internationally associated companies arise firstly from the distribution of business functions and secondly in the ability to influence final results within the general price range.

## 5.7 Overview: Other business-related taxes

The following section should give a brief overview about other taxes in Germany which could be relevant for entrepreneurial activities in Germany.

### 5.7.1 Real estate tax

Real estate tax is an annual tax levied by German municipalities on real estate property. It is payable by the owner of the property irrespective of residence. The real estate tax is calculated as follows:

Assessed value		
x Basic rate of tax (2.6 ‰ – 6 ‰)		
= Base amount		
x Multiplier (e.g. Düsseldorf 440 ‰)		
= Real estate tax		

### 5.7.2 Real estate transfer tax

Real estate transfer tax is triggered by conclusion of a sales contract or another legal transaction which creates the legal right to transfer the ownership of domestic real estate. Real estate transfer tax is also triggered in the event of the acquisition of at least 95 % or more ownership interest in a company which owns real estate. The same applies if 95 % or more of the interests in a partnership are transferred to new partners within a 5-year period. The tax is measured in accordance with the value of the consideration or the statutory value of the real estate. Since January 1<sup>st</sup>, 2012 the tax rate is between 3.5 % to 6.5 %, depending on location/federal state.

A reform of real estate transfer tax is in progress but has not yet come into effect. It is possible that the tax change will take effect retroactively to 01.01.2021 to the effect that the acquisition of at least 89 % or more shares (see above) within 10 years will trigger the tax.

### 5.7.3 Energy tax

Since August 1<sup>st</sup>, 2006 the energy tax act (“Energiesteuerergesetz”) is applicable. The energy tax act has substituted the prior applicable mineral oil tax act.

Tax rates in €	
Tax rate per 1,000 l gasoline*	654.50 / 669.80
Tax rate per 1,000 l diesel*	470.40 / 485.70
Tax rate per 1,000 l light heating oil*	61.35 / 76.35
Tax rate per 1,000 kg heating oil	25.00
Tax rate per 1 Mwh natural gas (for heating)	5.50

\*according to sulphur content

### 5.7.4 Electricity tax

Electricity tax was introduced in Germany in 1999.

Period	Regular tax rate	Reduced tax rate
From January 1 <sup>st</sup> , 2003 onwards	20.50 € / MWh	11.42 € / MWh

### 5.7.5 Inheritance and gift tax

Lifetime gifts and transfers at death are subject to inheritance tax. The amount subject to tax is equal to the value received by the transferee.

Tax class		
I	II	III
Spouses and life partner, children and grandchildren, parents and grandparents in the event of transfers at death	Siblings, nieces / nephews, step-parents, children in law, parents in law, divorced spouses and life- partners, parents and grandparents in the event of gifts	All other transfer-ees

Tax-free amounts		
I	II	III
500,000 € spouse and life partner	20.000 €	20.000 €
400,000 € children and children of predeceased children		
200,000 € other grand children		
100,000 € others		

A special tax exemption of 256,000 € applies to transfers at death to the surviving spouse or registered life partner. There are tax exemption and tax relief for domestic business capital, business enterprises as well as for shares in corporations. Furthermore there is tax relief for inheritors concerning the succession of companies.

Tax rates in %	I	II	III
Value of the taxable acquisition (up to and including):			
75,000 €	7	15	30
300,000 €	11	20	30
600,000 €	15	25	30
6,000,000 €	19	30	30
13,000,000 €	23	35	50
26,000,000 €	27	40	50
more than 26,000,000 €	30	43	50

## 6 Social insurance

Aside from the wage tax the employer also has to withhold and pay national insurance contributions for the employee.

The social insurance in Germany involves the annuity-, unemployment-, health- and nursing care insurance. Basically only employees (employee/external managing director) are liable for the social insurance, whereas the contributions are to be paid half by the employee and half by the employer (exemption: health insurance). The associate manager is free of insurance deductions.

### 6.1 External managing director / employees

In principle, all employees are compulsorily insured under statutory health insurance if their gross pay does not exceed a defined upper limit (presently € 64,350 p.a.). When exceeding the maximum limit the employees have the choice to insure themselves under public health insurance or privately. It depends on the respective individual case what is more reasonable. Regardless if insured privately or under public health insurance, the insured persons are free

to choose the health fund with which they wish to be insured.

The rate of contributions of the respective fund is 14.6 % of the gross salary. The employees and the employers each pay 7.3 %. Additionally the employees have to pay a further contribution. The amounts depend on the insurer's regulations and currently have a range of up to 1.3 %.

Nursing care is also a compulsory insurance.

The following basically applies: "nursing care insurance follows the health insurance". That means that the one who is insured under public health insurance is automatically covered by the social nursing care insurance. That also applies to additional insured family members. People who are insured privately have to take out private nursing care insurance. The rate of contribution amounts to 3.25 %. A childless employee (older than 23 years) has to pay a contribution of 3.5 %.

All employees are compulsorily insured in the annuity insurance. The rate of contribution presently amounts to 18.6 %.

Furthermore employees are compulsorily insured in the unemployment insurance. A voluntary insurance against unemployment does not anticipate any right of employment promotion. Self-employed persons cannot insure themselves against the risk of unemployment. The rate of contribution presently amounts to 2.5 %.

## 6.2 Associate-manager

The associate-manager is not bound by instructions because he normally cannot manage the fate of the limited liability company and thus he is not liable for insurance deductions. These premises are generally given if the investment is more than 50 %. In case the investment is less than 50 % the detailed circumstances of the association are crucial. Unless he can decisively influence the business affairs of the asso-

ciation because of a small investment, it is assumed that there is an obligation to contribute to social insurance.

In case of doubt, legally binding information should be gathered at the social insurance carrier.

For associate-managers who are not insured privately there is the possibility of voluntary health insurance in case they were employed in previous times. Furthermore they can apply for a compulsory insurance or a volunteer insurance in the annuity insurance.

For the case of foreign managing directors/employees in Germany, the external regulations are to be considered additionally.

## 6.3 Social Security Contributions

Income limit for the assessment of contributions	Old Federal States	New Federal States
<b>Old Age benefit insurance/unemployment insurance</b>		
Annual	84,600 €	81,000 €
<b>Health Insurance/Nursing care insurance</b>		
Annual	58,050 €	58,050 €
<b>Rates of contribution (payed half each by employer and employee)</b>		
Old age benefit insurance	18.6 %	
Unemployment insurance	2.4 %	
Nursing care insurance	3.05 % (childless, from 23 years: 3.5 %)	
Health insurance	14.6 % (employee and employer: 7.3 % each) + individual contribution depending on the insurer	

## 7 Law of residence

On January 1<sup>st</sup>, 2005 the new immigration law became effective. The key element of this law is the Residence Law. It regulates the entry, the abode, the establishment, the gainful employment and the stay's termination of foreign persons.

The regulations of the immigration law are not only important for the managing director but also for all the other foreign employees as well as for their family members.

### 7.1 Residence title

Foreign persons need permission for their entry and their stay in Germany, which is granted in the form of a residence title. Because of the immigration law the number of residence titles was limited to 2. These are on the one hand the (temporary) residence permission and on the other hand the (unlimited) permanent residence. The Residence Law additionally mentions the visa as a third residence title.



Citizens of EU member states do not fall under the Residence Law but under the free movement law/EU. EU-residents can act almost unrestrictedly and take up employment e.g. as manager. For qualified employees the principle of precedence applies, that means that there are no equivalently qualified German persons available.

Because of the contracts under international law, international agreements or friendship treaties, trade agreements and address contracts, citizens from non-EU countries can also be

granted the right of free movement within the EU or the approval of a residence permit can be simplified.

For foreigners from non-EU countries normally the chances of participating actively in business in Germany is much more limited than for EU citizens. Furthermore the recruitment ban does not only apply to unqualified or low-qualified persons but also to qualified foreigners, however it can be abrogated through a statutory instrument for particular professional groups.

#### 7.1.1 Limited residence permit

Limited residence permits are issued for the following purposes listed in the Residence Act.

These are for example:

- education or training (Sections 16 – 17 of the Residence Act),
- employment or self-employment (Sections 18 – 21),
- for humanitarian or political reasons, or reasons based on international law (Sections 22 – 26),
- for family reasons (Sections 27 – 36).

The issuance of a limited residence permit for all of these purposes depends upon individual requirements. The limited residence permit is temporary but it can be extended if the respective requirements continue to exist.

Moreover it should be considered for the extension of the limited residence permit whether the foreigner met his obligation of an adequate participation in an integration class. The objective of the integration is to integrate the foreigners who live permanently within the German society. A priority in the integration classes is the acquiring of the German language. In addition to that the integration classes provide knowledge concerning legal order, history and culture. The costs for such classes are paid for by the state.



Non-EU citizens need a limited residence permit for the purpose of gainful employment. The previous double authorization process (residence and employment permit) has been replaced by an internal procedure on the granting of approval. Foreigners only have to apply to the responsible foreigners' registration office which obtains the approval for labour permit directly at the Federal Employment Agency and issues the labour permit in combination with the limited residence permit.

Special regulations apply to managing directors (irrespective of the employment status as an employee or self-employed), authorized representatives or chief representatives as self-employed persons.

In this case the limited residence permit can be issued without the approval of the Federal Employment Agency when there is a superordinate economic interest or a regional requirement if positive effects on the economy can be expected from the activity and the financing is guaranteed. Normally these circumstances are given when at least 5 jobs are created and at least € 250,000 are invested. A limited residence permit can also be issued when privileges under international law are based on mutuality.

If foreign collaborators of the limited liability company are recruited as employees the Federal Employment Agency has to approve the limited residence permit. This requires that no negative effects on the employment market will result and there are no German employees or co-equal EU citizens available for this job.

The limited residence permit for self-employed (managing directors, authorised representatives) is issued for three years at most. The basic requirements notwithstanding, a permanent settlement permit can be given after three years if the foreigner has realized the planned activity successfully and his livelihood is assured.

### **7.1.2 Permanent settlement permit**

The permanent settlement permit is spatially and temporally unlimited and entitles gainful employment. In principle it shall be issued only when the foreigner proves that Germany is in fact his/her principal residence for at least five years and that he/she possesses a sufficient knowledge of German as well as a basic understanding of Germany's legal and social systems.

For highly qualified persons the permanent settlement permit can be issued immediately in special cases. Highly qualified persons include scientists with specialized knowledge and teaching staff and research assistants, also specialists and executive employees with special professional experience who presently draw a salary of at least € 53,600. For understaffed professions the minimum salary is € 41,808.

## **7.2 Limited residence permit for self-employed persons**

As described above, a limited residence permit can be issued for the performance of an independent activity when there is a superordinate economic interest or a special regional requirement for the business project of the foreigner. In addition to that the assessment of the requirements depends on the business idea, the foreigner's entrepreneurial experiences, the amount of capital expenditure, the effects on the employment- and apprenticeship situation and the contribution to innovation and research. For this assessment the competent statutory corporations which are responsible for the location the responsible trade agency, the trade associations under public law and the public authority responsible for occupation permission must be involved. Therefore it is advisable to coordinate with the chamber of commerce and industry responsible for the location.

Furthermore it must be considered that foreigners who are older than 45 years are only

granted the limited residence permit if they possess an adequate old age pension.

The application for a limited residence permit must be submitted to the foreign nationals' office of the place where the managing director has his/her principal residence. It is advantageous if the managing director's abode and the registered office of the limited liability company are identical so that the same agency is responsible.

For the application normally the following documents must be submitted in original and twofold copy:

- Completed official application form with a photograph
- Valid passport
- Personal data sheet with all testimonials, diplomas, certificates of employment etc. in German
- Business plan which shows the planned business development in the first three to five years. It should be explained in detail what plans the company has in the German and European market, why the presence of the foreign managing director is necessary for the realisation of these objectives and if or how many jobs will be created.
- Supportive letters of German and foreign companies, organisations, public or private agencies etc. are helpful (basically a certified German translation is necessary, but often the presentation in English is sufficient).

In individual cases further documents are to be submitted. Therefore it is advisable to ask your German agency abroad.



In case the future managing director is still abroad the application must be made at the local German agency abroad (embassy, consulate).

### **7.3 Limited residence permit for employees**

As described above the approval of the Federal Employment Office is necessary for the issuance of a limited residence permit.

In principle the recruitment ban applies for Germany. For the performance of an activity which calls for qualified professional training, a limited residence permit can be issued only to a particular occupational group which was approved by executive order law. In the individual justified case a limited residence permit can be also issued for an activity if there is a public, especially a regional, an economic or an employment market political interest in the activity of the foreign employee.

For the application normally the following documents must be submitted in original and twofold copy:

- Completed official application form with a photograph, signed by the employee as well as by the employer
- Valid passport
- Detailed comment of the employer as to why exactly this foreign employee is of great importance for the formation and development of the company

The application must be submitted to the local foreigners' office at which the employee has his principal residence, whereas it is helpful if the employee's abode and the place of business are identical so that the same agency is responsible.

In case the future managing director is still abroad the application must be made at the local German agency abroad (embassy, consulate).

#### **7.4 Limited residence permit for family reasons**

To foreign employees who stay longer in Germany the subsequent immigration of the family members could be of interest. The subsequent immigration of husbands/wives and children outside the EU is also regulated in the Residence Law.

The precondition for the subsequent immigration of family members to a foreign national is that the foreigner has a limited residence permit or a permanent settlement permit and that sufficient living space is available.

Furthermore the livelihood of the family member must be ensured without the recourse to public funds and there must be no grounds for expulsion.

These regulations only concern the subsequent immigration of under-aged unmarried children less than 16 years of age and spouses. Under-aged unmarried children less than 16 years of age will only receive a limited residence permit if they are able to speak the German language or if the integration into German society seems to be ensured because of the previous education and the circumstances. Relatives other than spouses or unmarried minor children may immigrate subsequently only if necessary in order to prevent unusual hardship.

#### **7.5 Short term residence in Germany**

In principle the entry to Germany requires a visa. But EU foreigners and citizens of particular countries as Iceland, USA, Switzerland, Japan, Canada etc. can enter without a visa, irrespective of the length of time and the purpose of the stay even if they want to stay permanently.

It should be considered that hiring an employee requires the application for a residence title and no employment can be taken up before the issuance of a respective residence title.

The application for a visa is to be made at the German agency abroad in the respective country. According to the length and purpose of the intended stay the German agency abroad decides on the application alone or together with the foreigners' office responsible for the residence in the future.

Concerning the visa for short stays, for example visit or business visa, the agencies abroad check this on their own. If the visa applicant intends to stay longer than three months or to work in Germany principally the foreigners' office is to be included and if he/she intends to take up an employment the Federal Employment Office must also be included by the German agency abroad unless one of the legally defined exceptions applies.

It is therefore important to clearly state the purpose of the intended stay so that the proper procedure can be carried out. The issuance of a residence permit for a different purpose than the one for which the visa was granted after the visa holder has entered Germany is only possible in exceptional cases.

Moreover the applicant has to prove that his/her stay in Germany is financially ensured.

For travels for the purpose of visiting, the German host has to commit to paying for all costs which accrue from the guest's stay in Germany including the costs for possible medical treatments.

In accordance to §§ 66 ff Residence Act the German foreigners' offices at the host's place of residence are regularly responsible for the acceptance of such a formal obligation.

For the business visa the host can confirm informal cost absorption by his/her signature. Concerning legal persons a person authorised to sign must extend an invitation. Documents to prove the authority to sign a certificate of registration or something similar must be submitted.

Visa for business or visit stays are normally issued in accordance with the Schengen Agreement. With this visa foreign nationals can cross the common internal borders of the EU member states at each place without any checks on persons.

The Schengen visa enables travels up to 90 days per half-year in the whole Schengen-area, whereas Germany must be the main destination.

Otherwise the visa should be applied for at the agency abroad of the country which is the main destination. If a longer stay is intended e.g. for the performance of a profession or in the scope of subsequent immigration of family members, only national visa are issued which simply authorize travel through other Schengen countries.

The visa for short stays can also be issued for more stays with a validity period up to five years provided that the residence period does not exceed three months within a time limit of six months beginning from the day of the first entry.

For business and visit stays no visa is necessary for citizens of many countries. It conforms to European Law (prescription 539/2001), by which citizens are obligated to have a visa even if they do not want to stay longer than three months in the area of the Schengen countries and even if they do not intend to become gainfully employed.

A business visa normally does not authorise taking up business activities. Thus the activity

of a limited liability company's managing director cannot be performed in the scope of a business visa.

For the management of business affairs a limited residence permit for the managing director is compulsory.

## 8 Checklist for business start-up (for non-EU-citizens)



Below we summarise the steps to be undertaken as well as their temporal scope in a checklist:

1. Before entering the country the foreigner must apply for a residence title at the German agency abroad. This can occur in form of a visa or directly as a limited residence permit. Concerning the application for a visa for a short stay it should be considered that only preparations can be made for a business formation or an investment plan. But the gainful employment is excluded so that the activity as a managing director of a limited liability company is not allowed. A limited residence permit is indispensable for this. Nationals from the EU as well as from particular countries who do not need a visa for entry can apply for a residence permit directly in Germany. For a short time visa up to € 80 should be calculated. The costs for a residence permit depend on various factors. On description of the individual case these

factors can be asked for at the foreigners' office. As a rule the agencies abroad need between two and ten workdays to decide on an application for a visa for a short stay. For the application in Germany one should calculate up to 8 months for the processing of the residence permit, depending on the place and region. This length of time extends directly on application at the German agency abroad by another four to five weeks for sending the documents to Germany and back. The application for the residence permit for employees can extend by another six weeks because the approval of the Federal Employment Office must be obtained. After the issuance of a residence permit the articles of association have to be prepared and notarised (see paragraph II).


2. Furthermore the registered capital has to be invested. In case of cash formation the registered capital is to be paid into the business account of the limited liability company "in the course of formation". The appointment of a managing director can be effected either in the articles of association or through a separated resolution adopted by the partners. It is advisable to appoint the managing director in the first shareholders' resolution in connection with the certification of the articles of association because otherwise the articles of association would have to be changed in connection with each managing director's change.
3. The company has to be registered personally by the managing director at the responsible local court.
4. The registration has to be notarised. The notary transmits the registration to the register court after evidence of the deposited registered capital has been provided.

5. Examination of the formation by the register court and registration of the company in the Commercial Registry. A period of three to four weeks should be calculated for this.
6. The commencement of a commercial action is to be registered at the commercial registration office or at the municipal public order office in the city or community in which the activity shall be taken up. The registration can be effected personally or in writing or also via fax.

Registrations of business via e-mail are not admissible due to a lack of signature.

The following documents need to be submitted for the registration:

- Identification card or passport
- Copy of the residence permit
- Proof of the commercial premises by presentation of a tenancy agreement
- Proof of the registration in the Commercial Registry by presentation of an excerpt from the commercial registry
- if necessary passport of the person authorised to represent
- If necessary: notarised authorisation, unless the registering person is authorised to represent according to the Commercial Registry
- For the registration of business, fees of about € 15 to € 65 (depending on the location) are charged. Through the registration, the responsible fiscal authorities, the Employer's Liability Insurance company, the industrial inspectorate and the chamber of commerce and industry will be informed by the commercial registration office and as a result the membership and liability to contribution come into existence.



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# Get to know us!

## **Franz Reißner Treuhandgesellschaft mbH**

Hauptsitz Düsseldorf

Sitz der Gesellschaft: Prinz-Georg-Straße 15  
40477 Düsseldorf



## **Wolfgang Hohl**

CPA – Tax Consultant

Tel.: +49-211 94403 - 18  
Mobil: +49-172 211 3548  
Fax: +49-211 94403 - 80  
E-Mail: wolfgang.hohl@frtg-group.de

## **Andrea Tomlinson**

Tax Consultant

Tel.: +49-211 94403 - 67  
Fax: +49-211 94403 - 80  
E-Mail: andrea.tomlinson@frtg-group.de



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