

# Investment in Germany Law & Tax



<b>1</b>	<b>Introduction.....</b>	<b>1</b>
<b>2</b>	<b>Types of enterprises in Germany .....</b>	<b>1</b>
2.1	Formation of a dependent branch (plant location).....	1
2.2	Formation of an independent subsidiary.....	1
2.3	Formation of a subcompany.....	1
<b>3</b>	<b>Formation of a limited liability company.....</b>	<b>2</b>
3.1	Shareholders .....	2
3.2	Company Agreement .....	3
3.3	Capital .....	3
3.4	Appointment of the elements .....	4
3.5	Registration of the company .....	5
3.6	Functionality of the limited liability company .....	6
3.7	Last important changes of company law.....	6
3.7.1	Limited liability entrepreneurial company .....	6
3.7.2	Introduction of model protocols.....	7
<b>4</b>	<b>Yearend closing and audit .....</b>	<b>7</b>
<b>5</b>	<b>Business Taxation .....</b>	<b>8</b>
5.1	General Rules on the Taxation of Company Income.....	8
5.2	Partnerships and Sole Proprietors.....	8
5.2.1	Taxation of the partnership.....	8
5.2.2	Taxation of the partners .....	9
5.2.3	Reinvestment reserve .....	9
5.3	Corporations.....	10
5.3.1	Taxation of the corporation.....	10
5.3.2	Taxation of the shareholders .....	10
5.3.3	Gains from the sale of corporate stocks (private assets) .....	12
5.3.4	Hidden distribution of profits.....	12
5.3.5	Interest deduction ceiling.....	13
5.3.6	Loss offsetting.....	13
5.4	Value Added Tax.....	14

<b>5.5</b>	<b>Taxation of Managing Directors, Officers with Statutory Authority (Prokuristen) as well as Employees – Income-taxation overview</b> .....	<b>14</b>
5.5.1	Place of Residence in Germany .....	14
5.5.2	Place of Residence outside Germany .....	14
5.5.3	Place of Residence in Both Countries.....	15
5.5.4	Income tax-overview 2012.....	15
<b>5.6</b>	<b>Double Taxation Treaties and German Foreign Tax Law</b> .....	<b>16</b>
<b>5.7</b>	<b>Overview: Other business-related taxes</b> .....	<b>16</b>
5.7.1	Real estate tax .....	17
5.7.2	Real estate transfer tax .....	17
5.7.3	Energy Tax .....	17
5.7.4	Electricity Tax.....	17
5.7.5	Inheritance and Gift Tax .....	17
<b>6</b>	<b>Social insurance</b> .....	<b>18</b>
<b>6.1</b>	<b>External managing director/ employees</b> .....	<b>18</b>
<b>6.2</b>	<b>Associate-manager</b> .....	<b>19</b>
<b>6.3</b>	<b>Social Security Contributions</b> .....	<b>19</b>
<b>7</b>	<b>Law of residence</b> .....	<b>20</b>
<b>7.1</b>	<b>Residence title</b> .....	<b>20</b>
7.1.1	Limited residence permit .....	20
7.1.2	Permanent settlement permit.....	21
<b>7.2</b>	<b>Limited residence permit for self-employed persons</b> .....	<b>22</b>
<b>7.3</b>	<b>Limited residence permit for employees</b> .....	<b>23</b>
<b>7.4</b>	<b>Limited residence permit for familiar reasons</b> .....	<b>23</b>
<b>7.5</b>	<b>Short term residence in Germany</b> .....	<b>24</b>
<b>8</b>	<b>Checklist for business start up (for non-EU-citizens)</b> .....	<b>25</b>

II

## 1 Introduction

According to a survey, Germany is the most attractive investment location in Europe for international companies and for every fifth company it is one of the three most attractive locations worldwide among the USA and China. The infrastructure, the quality of research, development and staff training were mentioned as particularly positive.



This article shall give an overview of the possibilities and the regulations in Germany, which should be observed.

## 2 Types of enterprises in Germany

In Germany foreign companies have several possibilities 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 dependant division or an auxiliary place (depot, sales office, etc.). But it is no 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. It has to be established for a particular length of time and moreover it must have an own company management.

The subsidiary is to be registered in the Commercial Registry in the place of the head office. If it is a foreign head office the registration has to be made in the place of the management of the subsidiary. There are incurring costs for the registration.

1

### 2.3 Formation of a subcompany

On founding a subcompany a legally independent company unit comes into existence. The legal basis for this depends on the form of organisation you have chosen. The subcompany operates under a certain name and makes up the balances by itself. The establishment regulations, the registration of the business and the registration in the Commercial Registry conform to the particular German law and they also have 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, which form of organisation, is the right one.

Especially corporations are important due to the limitation of liability for the deposit and because of the possibility of the formation by only one associate..

On the one hand that 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, only the formation of a limited liability company shall be illustrated below.

### 3 Formation of a limited liability company

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



After the limited liability company (GmbH) is founded by a natural person, the prepared company agreement will be notarised on presentation of the identification card or the passport and the GmbH will be signed up for the registration in the Commercial Registry. In case, an external company founds a limited liability company, it has to prove its existence to the German notary and the Commercial Registry. This can occur through the creation of a whole documentation (e.g. Articles of association, Business License and Registration Certificate). Provided that the person authorised to represent (Managing Director, General Manager, CEO) does not establish the limited liable company personally in Germany, he has to give his authority to a confidant and it has to be submitted notarised and in the form of a certified translation. The external notary's signature has to be certified either at the German embassy or it has to be annotated with the apostil of the responsible court.

This complex establishment procedure can be avoided by a so called "shell acquisition", which gives the possibility to start the business activities immediately. At this, in either case an already existing limited liable company should be bought, which has not developed any business activity. In the case of buying a firm, which is already engaged in business, there is a

risk to take over unknown liabilities of the alienator. “Shell acquisitions” are offered by several service providers, also by our house. The costs of such a “shell acquisition” are € 1,750.00 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 that the requirements of the external shareholder can be considered, if no compelling prescriptions of the limited liability company law are opposed.

The company agreement has to be notari- ally certified and it has to contain the fol- lowing information: company and regis- tered office of the limited liable company, company’s subject, amount of the original share capital, amount of the deposits, which have to be paid to the original share capital by every shareholder (original share capital). Furthermore it can be rec- ommended to make an arrangement con- cerning the following matters: financial year, duration of the company and cancel- lation, nomination of the managing direc- tor, scope of power of representation, de- cree 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, retire- ment and contention, cost of foundation, exoneration of the self-contracting prohibi- tion for the director, arbitration clause, restraint of competition clause.

In respect of the company (name of the company) the shareholders are extensive-

ly free. The company name can derive from the object of the enterprise, the name of one or more shareholders or it can also be composed of fancy names. The share- holders only have to consider that the company name has to contain the addi- tional specification GmbH, respectively limited liability company and that no other registered company has the same name. As an injunctive relief for new founders is granted to the beneficiary of a brand- or company name nationwide, the innocu- ousness of the name should be checked before the registration in the Commercial Registry. The revision of the firms, which are registered at the same place, can be requested at the responsible chamber of commerce and industry. The chamber of commerce and industry in Frankfurt also checks nationwide registered company and brand names if requested.

3

The limited liability company can pursuit 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 rela- tion to the chosen place (e.g. the place of the management or the place of the ad- ministration or the permanent establish- ment).

### 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, but at least € 12,500, is to be paid in immediately. The lacking part can be paid in on request of the management. But it has to be considered, that the associates are personally liable for the amount of the

capital invested, which has not been deposited yet. To avoid the risk, the capital invested should be paid in full.

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 has to be considered that it is to be effected in full. Moreover the shareholders have to demonstrate the recoverability of the contribution in kind of a special establishment report. If it is ascertained later, that the recoverability was not existent, the associates will be liable.

For the cash deposit a company account has to be opened with a bank, to which the original share capital will be transferred. Basically a company account can be opened only on presentation of the certificate of registration. However, at many banks there is the possibility to open an account for the company “during the formation” for the phase of formation and for the purpose of the proof of deposit towards the notary and the Commercial Registry.

The opening of a current account is advisable. 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 direc-

tors as original or certified transcription

- As far as the managing director is not appointed yet, all shareholders have to attend the opening of the business 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.

As managing directors only natural absolutely capable persons (also shareholders) are considered. One or more persons can be appointed managing director. The appointment will be effected by dint of 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 or along with the other managing directors. 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 also has to be registered in the Commercial Registry. The power of procuratorship authorises to all

judicial and extrajudicial legal transactions the business of a company implicates, simply for the sale and charging of premises the power of procuration authorises only when the authorisation has been extended specifically to this matter. The authorised representative is unauthorised 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 only several (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

The limited liability company comes into existence as a legal person from the registration in the Commercial Registry. 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 and on behalf of the company.

For the registration in the Commercial Registry 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 have to be indicated.

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

- Company agreement and establishment authorities (if the articles of association are signed by authorised representatives) either the original or a certified transcript
- Shareholder's resolution or another appointment document of the managing directors as original or certified transcription
- List of shareholders (name, first name, birthday and place of residence) with the indication of the capital invested
- 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.)
- Insurance 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)
- Insurance 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 takes over the management of the limited liability company. Every natural person, whether it is 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 allowance 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 features a corresponding qualification.

The managing directors are obligated to give effect to the instructions of the shareholders. They represent the company inwards and outwards. The associates are no managing directors, but they manage the business affairs for the company. Thus there is neither a third party liability in the field of debts nor an obligation to clear losses of the company, which accrued

while managing. Nevertheless the managing directors are obligated to manage the business affair with the diligence of proper businessmen. If they don't, internal claims for damages of the company can arise. Moreover they are liable for the taxes of the company in relations to the outside world.



The control of the managing directors is effected through the shareholders. The managing directors have to inform every shareholder about matters of the company at request and he has to allow him to look at the accounts and scripts.

6

### 3.7 Last important changes of company law

On 1 November 2008, the Act to Modernise the Law Governing Private Limited Companies and to Combat Abuses entered 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. The company name has to contain the additional specification UG (haftungsbeschränkt) or entrepreneurial company (haftungsbeschränkt).

The limited liability entrepreneurial company [Unternehmergesellschaft (haftungsbeschränkt) – UG] constitutes an alternative form of the limited liability company for new set-ups and is of particular interest for founders of new businesses who only have a limited amount of nominal capital at the start of operations, and who only need a small amount. The limited liability entrepreneurial company (UG) is not an entirely new legal structure, but rather an alternative form of limited liability company (GmbH) which can be formed without the need for certain minimum nominal capital at the outset. The share capital can amount between 1 € and 24,999 €. However, this type of 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 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 share-

holders), 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.

## 4 Yearend closing 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 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 yearend closing shall give a picture of the financial situation and position as well as the result situation, in accordance to the real circumstances.

For middle-sized and big limited liability companies it is imperative that a chartered accountant or a sworn auditor makes 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 balances together with compendious notes to the electronic Federal Gazette. Middle-sized

companies have to submit to the electronic Federal Gazette a condensed annual balance sheet and profit and loss accounts, as well as compendious explanatory notes and a management report as well as 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.

It depends on the balance sum of the annual net turnover and the number of employees, whether an association is small, middle-sized or big.

## 5 Business Taxation

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

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

Partnerships (non-corporate entities like Offene Handelsgesellschaft – OHG, Kommanditgesellschaft – KG and Gesellschaft bürgerlichen Rechts – GbR), contrariwise, are 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 subject to the Income Tax. The partnership itself is just subject to the 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 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 at least 10 % and 17 %.



The liability for municipal trade tax is less of a burden as a result of the fact that the municipal trade tax can be credited against the income tax. This results in a significant reduction in the overall tax burden on proceeds.

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 is for all businesses 3,5 %. Therefore the trade tax is no operating expenditure for all businesses.

## 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 underlies income tax purposes. A person subject to only limited taxation may set-off his losses provided

such losses arose in connection with domestic revenues.

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 is 15 % at present.

Payable on top of the income- or corporation tax amount resulting from the above percentage rates is presently a "solidarity surcharge" (Solidaritätszuschlag) of 5.5 % which is used to finance the German unification process.

## 5.2.3 Reinvestment reserve

9

Sole proprietors and partnerships at which no corporation is participating, can transfer capital gains up to 500.000 € (in case of a partnership for each partner) from the sale of shares in corporations which have belonged to 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 to the corporation tax. The corporation tax rate is 15 % at present. In addition to the corporation tax a solidarity surcharge will be levied. This presently amounts to 5,5 % of the corporation tax.

Thus, for a corporation you have to calculate a total encumbrance normally under 30 % depending on the commune.

In case that the corporation effects disbursements to the associates, a capital gains tax (25 %) of the disbursement incurs. This tax must be withheld and paid to the financial office, no matter whether it concerns internal or external shareholders. As in case of the corporation tax, a solidarity surcharge of 5.5 % will be raised on the capital gains tax.

#### 5.3.2 Taxation of the shareholders

For a company limited by shares, corporation tax plus solidarity surcharge is levied (s.a.). The sum remaining can be distributed to the shareholders. With regard to the taxation of the shareholders it is differ-

entiated between natural persons, partnerships and sole proprietors as well as corporations. Under certain conditions an exemption from the capital gains tax is possible.

#### 5.3.2.1 Natural persons as shareholders

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

Since the year 2009, for natural persons, income from capital assets, particularly interest, dividends and profits from sales transactions, is subject to a final flat-rate withholding tax of 25 %. The tax is deducted at source. In this respect natural persons as shareholders no longer have a duty to declare said income. If the investor's personal income tax rate is below that of the final flat-rate tax, assessment and thus taxation at the lower personal tax rate may be selected.

The final flat-rate withholding tax of 25 % is to be applied basically to income achieved in the private property from capital gains which accrue after December, 31, 2008.

External natural persons, who have neither their residence nor their customary abode in Germany, are liable only to the limited income tax. Thus only the earnings achieved in Germany are taxable in Germany. The taxation as well as the amount of the tax is normally regulated by a double-taxation-treaty. Normally the shareholder receives dividends from the corporation, which are taxed in Germany and exonerated from tax by the other contract-

ing country. Also for natural persons the German tax and the capital gains tax is compensated. The tax credit and/ or reimbursement of the tax conforms in turn with the respective national law or the respective double taxation treaty.

### 5.3.2.2 Partnerships and sole proprietors as shareholders

From January, 1, 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 (5,5 %) are credited against the 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 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, independently 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 an internal corporation is a recipient of the disbursement, the disbursement is tax-free, whereas 5 % of the disbursement is treated as 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.

External legal persons are only subject to the limited corporation tax liability. That means that in Germany only the earnings achieved internal are liable to the 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 an external company receives dividends from the German corporation, these dividends will generally be taxed in Germany and exonerated 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 the mother-daughter directive, it is also possible not to withhold any capital tax by the German subcompany, in case the european mother 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 €
- Corporation tax (15 % on 100,000.00 €)	<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 (eg. 45 %)	Individual (eg. 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 €
(partial-income-rule)	29,53 %	48,17 %	46,55 %

Please note that for simplification solidarity surcharge (5,5 %) have not been considered in the above table.

#### 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 differences when determining the basis for assessment of taxes by comparison with the partnership or sole proprietor exist in the fact that the contractual relationships between a corporation and its shareholders under the law of obligations are recognised for tax purposes. 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 insofar as the amount of the remaining interest expense exceeds 30 % of EBITDA (earnings before interest, tax, depreciation and amortisation). A not used EBITDA can be carry 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:**

##### 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.

##### Exemption limit:

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

##### 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 set-off against other positive income in the same year.



13

All losses not able to be set off in one year will be fixed at the end of the year by a special assessment and carried forward to the new year. This will prevent the losses being lost.

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 position as a limited partner he can only set off losses incurred through his position as limited party only up to the amount of his liability as limited partner in his income tax return. Losses up to € 511,500 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 €. With respect to trade tax, the same limitations apply as for income tax purposes, however, a loss carry-back is not possible.

#### 5.4 Value Added Tax

The deliverables and performances rendered by the company are normally liable for Value Added Tax in Germany. The Value Added Tax actually amounts to 19 %. A reduced tax rate of 7% presently still applies for particular goods (mainly food, books and articles of virtue; since 2010: Overnight stays in hotel industry). Deliverables within the European Union and export deliveries are free of tax.

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

#### 5.5 Taxation of Managing Directors, Officers with Statutory Authority (Prokuristen) 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 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 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. At this, the employer is obligated to withhold the tax from the salary and to pay it over to the financial 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 has his sole place of residence outside Germany, the right to levy taxes on income earned by him as managing director passes, under the majority of Double Taxation Conventions, to the Federal Republic of Germany if he is employed here. German law assumes that the management of a GmbH is always done 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 satisfied:

- 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 conventions. 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 will be depend on where the person to be taxed has the centre of his life's interests, that is to say to which country he has the closer personal and economic ties.

### 5.5.4 Income tax-overview 2012

#### Tax rates and personal exemption

Personal exemption	8,004 €
Minimum tax-rate	14 %
Maximum tax-rate	45 %
from a taxable income in the amount of	250,001 €

#### Allowances (p.a.)

Employee blanket allowance	1.000 €
Depositor's blanket allowance (Sparer-Pauschbetrag)	801 €

Expenses for pensions	102 €
Tax exemption for pensions:	max. 2,400 €
33,6 % of the pensions received, plus additional allowance of	720 €
Child allowance or Child subsidy	2,184 € for each child  2,208 € for the first and the second child, 2,280 € for the third child; 2,580 € for the fourth and more children)  1,320 € for each child
Child care allowance	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	1,308 € for single parent families, with at least one child living at home and for which the parent is eligible for the child subsidy or child allowance
Educational allowance	924 € for children aged 18 and over in professional training and living away from home. The tax-free amount is reduced by the child's own income and earnings that exceed 1,848 € a year as well as by educational grants.

15

#### 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 €/km can be deducted for each full km (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 ways between home and place of work and ways 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 international level, the question arises of 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 any double taxation convention and German Foreign Tax Law (Außensteuergesetz). Germany has

double taxation treaties with over 80 countries which are based on the OECD model treaty.

Under the majority of double taxation conventions, 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 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 that which 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 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 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 1 January 2012 the tax rate is between 3,5 % to 5%.

### 5.7.3 Energy Tax

Since August, 31, 2006 the energy tax act (“Energiesteuergesetz”) 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 sulfur content

### 5.7.4 Electricity Tax

17

Electricity tax was introduced in Germany in 1999.

Period	Regular tax rate	Reduced tax rate
From January 1, 2003 onwards	20.50 €/ MWh	12.30 €/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, children and grand children, parents, grand parents in the event of transfers at death	Siblings, nieces/nephews, parents, children in law, divorced spouses, grand parents in the event of gifts	Life partner with a registered life partnership	All other transferees
Tax-free amounts			
500,000 € Spouse	20,000 €	500,000 €	20,000 €
400,000 € Children			
200,000 € 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

Apart from the wage tax the employer has to withhold and pay also 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 to 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.

18

### 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 € 49,500 p.a.). When exceeding the maximum limit the employees have the choice to insure themselves further on voluntarily under statutory health insurance or privately. It depends on the respective individual case what is more reasonable. Irrespective if insured privately or under statutory health insurance, the insured persons are free to choose the health fund they wish to be insured with.

The rate of contributions of the respective fund is 15,5 % of the gross salary. The

employees pay 8,2 % and the employers pay 7,3 %.

The 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 statutory health insurance, belongs to the social nursing care insurance. That also applies to additional insured family members. People, who are insured privately, have to take out a private nursing care insurance. The rate of contribution amounts to 1,95%. A childless employee (from 23 years) have to pay a contribution of 2,2 %.

All employees are compulsorily insured in the annuity insurance. The rate of contribution presently amounts to 19,9%.

Furthermore employees are compulsorily insured in the unemployment insurance. A voluntary insurance against unemployment does not anticipate any right of employment promotion. Self-employed cannot insure themselves against the risk of unemployment. The rate of contribution presently amounts to 3 % .

## 6.2 Associate-manager

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

fairs of the association because of a small investment, you can assume that there is an obligation to contribute to social insurance.

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

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

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

19

## 6.3 Social Security Contributions

Income limit for the assessment of contributions	Old States	Federal States	New States	Federal States
<b>Old.age benefit insurance/ unemployment insurance</b>				
Annual	67,200 €		57,600 €	
<b>Health Insurance/ Nursing care insurance</b>				
Annual	50.850 €		50.850 €	
<b>Rates of contribution (payed half each by employer and employee)</b>				
Old age benefit insurance	19,6 %			
Unemployment insurance	3 %			

Nursing care insurance	1,95 % (childless, from 23 years: 2,2 %)
Health insurance	15,5 %

## 7 Law of residence

On January, 1, 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 external 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 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-foreigners can become act almost unrestricted and take up employment e.g. as manager. For qualified employees the principle of precedence applies, that mean that there are no German or Equal available.

Because of the contracts under international law, international agreements or friendship treaties, trade agreements and address contracts citizens from non EU countries can be equated to the right of free movement of the EU or the approval of a residence permit can be simplified.

For foreigners from third countries normally the possibilities to take an economical action in Germany is much more limited than for EU citizens. Furthermore the recruitment ban does not only apply to low- or unqualified 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 issue of a limited residence permit for all of these purposes is respectively bound to own requirements. The limited residence permit is temporary, but it can be extended, if the respective requirements will be proved again.

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 durably in Germany in the society. In the integration classes especially the German language shall be acquired. In addition to that the integration classes are also equipped with knowledge concerning legal order, history and culture. The costs for such classes are paid by the state.

Non-EU citizen 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 proceeding on the granting of approval. Foreigners only have to appeal to the responsible foreigners' registration office, which obtains the approval for labour permit directly at the Federal Employment Agency and gives the labour permit in combination with the limited residence permit.

Special regulations apply to managing directors (irrespective if as an employee or a self-employed), authorized representatives or chief representatives as self-employed.

In this case the limited residence permit can be given without the approval of the Federal Employment Agency, when there is a superordinated economic interest or a regional requirement, if positive effects of the activity can be expected on the economy 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 be also given when privileges under international law are based on mutuality.

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

The limited residence permit for self-employed (managing directors, authorised representatives) is given for at most three years. 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 to perform gainful employment. In principle it shall be given only when the foreigner proves among the assured livelihood and sufficient living space, the possession of the limited residence permit for at least five years, largely impunity, sufficient

knowledge of German and elementary knowledge of legal and social order.

For highly qualified the permanent settlement permit can be given in special cases immediately. To the highly qualified apply among scientists with specialized knowledge and teaching staff and research assistants in prescribed functions, also specialists and executive employees with special professional experience, who presently draw a salary of at least € 67,200 (Old Federal States) and € 57,600 (New Federal States).

## 7.2 Limited residence permit for self-employed persons

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

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

the limited residence permit is only given if they dispose of 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 first abode, whereas it is convenient, that the managing director's abode and the registered office of the limited liability company are identical, so that the same agency is responsible on location.

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

- Completed official application form with a photograph
- Valid passport
- Personal data sheet with all testimonials, diplomas, certificates of employment etc. in German translation
- Business plan, from which the planned business development in the first three to five years results. 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 and how many jobs will be created.
- Commendatory letters of German and foreign companies, organisations, public or private agencies etc. would be adjutant (basically

only one 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 recommendable to ask your German agency abroad.

In case that the future managing director is still abroad, the application must be made at the local German agency abroad (embassy, consulate). Also in this case the above mentioned documents are to be submitted on presentation of the identification card or passport.

### 7.3 Limited residence permit for employees

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

In principle the recruitment ban applies for Germany. For the performance of an activity, which calls for a qualified professional training, a limited residence permit can be given 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 given for an activity, if there is a public, especially a regional, an economic or an employ-

ment market political interest in the activity of the foreign employee.

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

- Completed official application form with a photograph, signed by the employee as well as by the employer
- Valid passport
- Detailed comment of the employer, 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 foreigner's office, at which the employee has his first abode, whereas it is convenient, that the employee's abode and the place of business are identical, so that the same agency is responsible on location.

In case that 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 familiar 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 underaged unmarried children less than 16 years of age and spouses. Underaged 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 in the German circumstances 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 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 and also if they want to stay permanently.

In this connection it should be considered that if an employment shall be taken up, an application for a residence title must be made for that and no employment can be taken up before the issue 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 Germany agency abroad decides on the application solely or among with the aliens department responsible for the residence in future.

Concerning the visa for short stays, for example visit or business visa, the agencies abroad check this on its own/ by itself. If the visa applicant intends to stay longer than three months or to work in Germany, principally the aliens department is to be included and if he intends to take up an employment also the Federal Employment Office must 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 issue 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 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 alien departments 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 affirm informal cost absorption and let his signature certify. Concerning legal persons a person authorised to sign must extend an invitation. For the proof of the authority to sign a certificate of registration or something similar must be submitted.

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

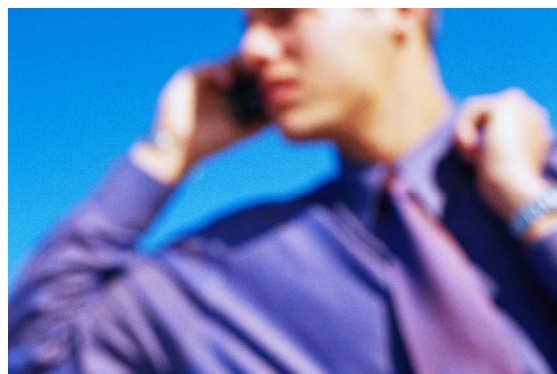
The Schengen visa enables to visit travels up to 90 days per half-year in the whole Schengen-area, whereas Germany must be the main destination.

Otherwise the visa should be requested 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 visas are issued, which simply authorized to travel through other Schengen countries.

The visa for short stays can be issued also 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 the European Law (prescription 539/2001), 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 to take up business activities. Thus the activity of a limited liability company's managing director cannot be performed in scope of a business visa.

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

25

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

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

1. Before the entry the foreigner must apply for a residence title at the German agency abroad. This can occur in the form of a visa or directly as a limited residence permit. Concerning the application for a visa for a short stay it should be concerned that solely 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 visa for a short time € 60 should be calculated. The costs for a residence permit depend on various factors. On description of the individual case you can ask for these factors at the aliens department. 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 you 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 issue of a residence permit the articles of association has to be closed and notarised (compare paragraph II). Furthermore the registered capital has to be invested. In case of a 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 rec-

ommendable to appoint the managing director in the first shareholders' resolution in connection of the certification of the articles of association, because otherwise the articles of association would have to be changed on every managing director's change.

2. The company is to be registered by the managing director personally at the responsible local court.
3. The registration is to be notarised and therefore it takes place at the notary, who transmits the registration to the register court after the provided evidence on the deposited registered capital.
4. 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.
5. 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 for a lack of signature.

The following documents are 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 register
- 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) accrue. 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, as the result the membership and liability to contribution comes into existence.



# Contact Details

## Our locations:



**Franz Reißner Treuhand-  
gesellschaft mbH  
Prinz-Georg-Str. 15  
40477 Düsseldorf**

**Tel.: +49 (0)211 94403-0  
Fax: +49 (0)211 94403-80**



**Franz Reißner Treuhand-  
gesellschaft mbH  
Alfredstr. 108  
45131 Essen**

**Tel.: +49 (0)201 87266-0  
Fax: +49 (0)201 87266-66**



**FRT Steuerberatungs-  
gesellschaft mbH  
Auf der Lind.12  
65529 Waldems-Esch**

**Tel.: +49 (0)6126 9788-80  
Fax: +49 (0)6126 9788-99**



**Ratio Treurat GmbH  
Bunsenstraße 6  
64295 Darmstadt**

**Tel.: +49 (0)6151 988560  
Fax: +49 (0)6151 988569**



**FRT Steuerberatungs-  
gesellschaft mbH  
Merseburger Str. 7  
06667 Weißenfels**

**Tel.: +49 (0)3443 306575  
Fax: +49 (0)3443 300249**

Visit us online at <http://www.FRTG.net>