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## Doing Business in Germany

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MSI's guide on *Doing Business in Germany* provides current information about the financial, regulatory and legal considerations that could affect business dealings within Germany. For further assistance please contact one of our MSI member firms in Germany.

## Country overview

### Population

Germany has a total population of 84.7 million inhabitants (December 2023).

### Government

Germany is a Democracy. The head of state is the Federal President, who performs mainly representative tasks. The Government consists of the chancellor and the federal ministers. The members of parliament are the representatives of the people.

Germany has 16 federal states, each with its own local government.

### Languages

The national language is German. However, most younger people speak English as well.

### Currency

The national currency is the Euro.

### Economic summary

GDP: 4,185 billion € (2023)

Per capita income: 50,734 € (2023)

Inflation: 1.9 % (August 2024)

### Main sectors of the economy

Germany is an export nation. For decades, the export of goods has been higher than the import of goods. In 2023 the value of exported goods was approximately 47,9 % of the Gross Domestic Product (GDP). The most important export goods are automobiles, machines, chemical products and data processing tools or electronic devices. The largest foreign trade partners in 2023 were China, the United States, the Netherlands, France and Poland.

### EU country/ Non-EU and its impact on businesses and investors

Germany is a member state of the European Union. It is an attractive base for doing business and for investments. Its open and international orientation, well-educated work force and strategic location all contribute to this.

The attractive fiscal climate and technological infrastructure create favourable conditions for international business.

### Setting up a business

Under German law, a foreign individual or company may operate in Germany through an incorporated or unincorporated entity or a branch. German corporate law provides a flexible and liberal framework for the organization of subsidiaries or branches. There are no special restrictions for a foreign entrepreneur to do business in Germany.

The business operations can be set up in Germany with or without a legal personality. If a legal entity has legal personality, the entrepreneur cannot be held liable for more than the sum it contributed to the company's capital.

### Legal types of business entities

1. Sole proprietorship
2. Limited liability companies (GmbH, UG haftungsbeschränkt, AG)
3. Partnerships (oHG, KG, GmbH & Co. KG, GbR)
4. Branch

In international business, the Private limited liability company (GmbH) and the branch are most commonly used. The GmbH is incorporated by one or

more incorporators pursuant to the execution of a notarial deed of incorporation before a civil law notary. The minimum share capital is €1 (UG haftungsbeschränkt) respectively € 25,000 (GmbH). It is not possible to select another currency than the Euro.

Many foreign companies make use of a subsidiary rather than a branch. The main legal reason to set up a subsidiary, instead of a branch, is limitation of liability. As a shareholder of a subsidiary in the legal form of a GmbH, the foreign company's liability is basically limited to the extent of its capital contribution; whereas, if the foreign company makes use of a branch, it is fully responsible for all the obligations and liabilities of the branch.

### Process of how to set up a business

A limited liability company or a partnership without a non-legal person as fully liable shareholder, are obliged to register at the respective magistrates' court and to enter the firm and its legal form into the Register of Companies. A limited liability company can only be incorporated by a notarial deed. In addition, a tax registration is necessary and after handing in a fiscal questionnaire, tax authorities will allocate a tax number.

A branch needs to be entered into the Register of Companies and to be allocated a tax number, too. Furthermore, a business registration with the trade licensing office and entry in the National Transparency Register are required.

### **Financial year of taxes and financial accounts**

The financial year is equal to the calendar year. However, legal entities may choose for a different financial year if they wish. The limited liability company is subject to corporate income tax. The branch is taxed with corporate income tax as well, but the parent company is liable to pay.

### **Accounting and auditing**

When is a statutory audit required?

A statutory audit is required when 2 out of the following 3 criteria are met in two consecutive years:

1. Annual turnover > €15 million;
2. Total assets > €7.5 million;
3. Number of employees > 50

## **Taxation**

The tax system in any given country is invariably an extremely important aspect when it comes to companies choosing a country in which to set up a company. The view taken by the German government is that the tax system may under no circumstances be an obstacle for companies wishing to incorporate in Germany.

In that framework, it is possible to obtain advance certainty regarding the fiscal qualification of international corporate structures in the form of so-called Advance Tax Rulings. In addition, Germany has also signed tax treaties with many other countries to prevent the occurrence of double taxation.

At the same time, its vast network of tax treaties offers instruments for international tax planning.

The German tax system can be divided into taxes based on income, profit and assets.

### **VAT**

The general VAT rate is 19 %. The reduced VAT rate of 7 % applies mainly to food.

### **Income tax**

Income from work in Germany is subject to the employee's personal tax rate, which increases depending on income up to 42 %; partially 45 % (plus solidarity surcharge of 5.5 % and church tax of about 8 %/9 % as percentage of the amount of income tax). Besides income from work as employee, the following income is subject to taxation:

- Self-employed income
- Business income
- Income from agriculture and forest economy
- Income from rent and lease
- Income from capital
- Other income, such as pension.

### **Corporate income tax and trade tax**

Profits generated by limited liability companies in Germany are subject to corporate income tax. Corporate income tax is 15 % of the taxable income (plus solidarity surcharge of 5.5 % as percentage of the amount of corporate income tax).

Furthermore, each business is subject to municipal trade tax. It is raised by the municipality in which the business is located and varies with respect to height. Approximately, it is another 15 % of the trading profit.

### **Registration procedures**

Both private persons and companies are given a tax number by the tax authorities. Tax statements and financial statements are submitted electronically to the tax authorities. On the other hand, for example tax assessments are sent by the authorities both in electronic and paper form.

### **Wage tax**

Wage tax is a withholding tax and as such it is an advance payment on income tax. The tax rate depends on income. Higher income comes with increasing tax rates.

In addition to wage tax, employees and employers have to pay contribution to the German social security system.

### **Withholding taxes**

The most common withholding tax is tax on capital income, meaning interest. Received interest above the tax-free amount of €1000 per natural person is taxed with 25 % (plus solidarity surcharge of 5.5 % and church tax of about 8%/9 % as percentage of the amount of withholding tax).

## **HR/ Labour Law**

### **Employment law**

An employment agreement may be agreed for an indefinite or fixed period of time. Fixed-term contracts cannot be renewed unlimited times.

### **Social security**

All employers and employees are obliged to pay contributions to the German social security system. The employees are insured under the statutory health insurance and pension fund, furthermore, in the unemployment and long-term care insurance as well as the statutory accident insurance.

Contributions are generally paid in equal parts by employees and employers. The employer pays them directly to the insurance companies (deductions from the gross wage). The employer pays the employers liability insurance contributions alone.

### **Pension**

For every employee (exemption: those with incomes over €90,600.00 per year) insurance in the statutory (national) pension fund is obligatory up to an income of €90,600.

In 2012 the age the pension starts was gradually raised from 65 to 67. For employees born in 1964 and later the regular pension age will be 67. Earlier retirement is possible.

### **Health insurance**

Statutory health insurance is mandatory for all employees, except for those with an income of over €69,300 per year.

### **Payroll**

When starting a business and employing staff, the company must register with the tax authorities. Wage tax and social

security is paid monthly to the tax authorities and health insurances. The process of registration takes several weeks.

**Visa and work permits**

All EU inhabitants can work freely anywhere in the EU without a special working permit or visa. If an EU national from outside Germany is employed in Germany, he/she must register with the tax office and a personal tax identification number is allocated. It may be necessary for certain professional groups, such as doctors or lawyers, to have their qualifications from their home country formally recognised.

People from outside the EU must apply for a work permit before taking employment in Germany.

## Contact us

The information provided in this guide cannot be exhaustive and we recommend anyone considering doing business in Germany seek professional advice from our member firms before making any business or investment decision.

### Contact our member firms in Germany to discuss your requirements:

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