

FACTS & FIGURES

# Investor's Basics

Setting Up Business  
in Germany

ISSUE 2017/2018



# Important Legal Issues

**This publication explains how the business establishment process in Germany works. It focuses on the questions most often posed by foreign companies. These can be grouped into four key categories: entry and residence requirements, business establishment, corporate taxation, and employees and social security. You will find essential information on these matters and many useful tips on how to establish a new business in Germany – both quickly and easily.**

## Entry and Residence

At some point within the process of establishing a business in Germany, foreign entrepreneurs usually have to come to Germany in person. Depending on the country of origin, individuals may require a visa to enter Germany. Long-term stays require a residence permit. Different types of residence titles are available subject to the intended business activities.

Our legal experts provide information helping you prepare your business trip to Germany by checking:

- whether a visa is needed before entering Germany or not,
- what type of visa or residence permit might be required for the planned business activity,
- granting requirements for different kinds of residence permits,
- how the application procedure works.

## Business Establishment

German company law offers a variety of different legal structures suitable for every type of business. Formation procedures are swift and efficient, with only a few steps needed to establish a company in Germany.

Our legal experts help you in preparing business establishment in Germany. We inform about:

- general ways to take up commercial activities in Germany,
- different company forms,
- the establishment procedure in detail,
- registration with the commercial register and trade office.

## Corporate Taxation

Tax implications must be taken into account when choosing a legal company form, since company taxation details mainly depend on the company form. Germany has a comprehensive regime of double taxation agreements with foreign countries which, for instance, handle double taxation of distributed profits.

We inform about:

- the German tax environment,
- tax implications of certain company forms,
- how to avoid double taxation,
- how to register with tax authorities.

## Employees and Social Security

Attention should already be paid to the question of how to recruit required specialists and employees at the company formation stage. Moreover, knowledge of the different employment models and the terms and conditions of employment help successfully complete the hiring process.

Our legal experts help you optimize the hiring process in advance by providing information on:

- flexible models of employment,
- different terms of employment,
- the social security system and payroll accounting,
- registering employees for the social security system.

# Legal Structures for Your Business

Anyone can establish a business in Germany – irrespective of nationality or place of residence. There is no specific investment legislation when setting up a branch office or a new subsidiary in Germany; nor is a minimum percentage of German shareholdings required for foreign entrepreneurs setting up business in Germany. The basic structure of all company forms is stipulated by law which provides for predictability and legal certainty. The same legal conditions apply for foreign and local entrepreneurs.

Foreign companies often report that engaging with business partners, suppliers, public institutions and banks on the German market generally is easier if a German company is established. In practice, a separate company held by a foreign company – a subsidiary – in the form of a corporation is often established. However, it is also possible to set up a company held by individual entrepreneurs.

Existing companies can also conduct business via a German branch office. Either way, the establishment procedure is straightforward with well-defined steps. Generally speaking, there are no restrictions placed upon foreign nationals who wish to establish a company in Germany. However, the local trade office registration generally requires that a local representative of the business be located in Germany.

## Subsidiary

A subsidiary is an autonomous company established and predominantly held by another company (parent company). The corporation form is often chosen for subsidiary formation.

The main feature of a corporation is the contribution of capital by shareholders. A corporation is a legal entity, meaning that the holder of rights and obligations is not the individual shareholder, but the company itself. The corporation itself concludes contracts, holds assets and is liable for taxation. Corporations are liable to corporate income tax, trade tax and the solidarity surcharge. Shareholders have limited personal liability. As such, a minimum share capital is required. A corporation can be established by one or more shareholders.

## GmbH

The most common corporate form in Germany is the private limited liability company (*Gesellschaft mit beschränkter Haftung – GmbH*), which combines high flexibility with relatively few obligations. Another advantage of the GmbH is that the liability for German business activities is limited to the assets of the GmbH. Please find further information about the GmbH form in the "Business Establishment" fact sheet.

## AG

The German stock corporation (*Aktiengesellschaft – AG*) is a company form intended for larger companies with a large number of shareholders. Eligibility for a stock exchange listing and the easy assignability of the shares makes it ideal for attracting capital. In contrast to the GmbH, the founding and organizational formalities of an AG are relatively numerous and inflexible due to mandatory rules. This said, the AG form enjoys a high market reputation.

## Company Forms for Setting up Business Activities in Germany

### Subsidiary

- Establishment of a new legal entity
- Different legal forms available (e.g. GmbH, AG)

### Branch Office

- No establishment of a new legal entity
- Registration of a German physical business presence



### Branch Office

Any foreign company with a head office and registered business operations outside of Germany can establish a German branch office. A branch office may be a suitable business form for a foreign company seeking to establish a presence in Germany for the purpose of initiating business and maintaining contacts with business partners.

#### Main Characteristics

A branch office has no independent or separate legal personality distinct from the head office itself. In legal and organizational terms, it is part of the head office business and is therefore subject to the law governing the head office. In this context, the foreign head office company is fully liable to the extent of its own assets for any claims creditors might assert against the branch office. Any obligations or debts incurred by the branch office are the legal responsibility of the foreign company.

In Germany, there are two kinds of branch establishment which primarily differ due to the degree of the independence from the head office company. Both forms require at least one representative be located in Germany.

#### Autonomous Branch Office

The autonomous branch office (*selbständige Zweigniederlassung*) fulfills tasks that exceed mere implementation and support-related tasks. It has a certain degree of business discretion that is limited by the scope of the business objective of the head office. The autonomous branch usually has its own management with executive powers, a separate bank account, and accounting (on its own or via the head office company) as well as independent business assets (allocated by the head office company).

#### Dependent Branch Office

The dependent branch office (*unselbständige Zweigniederlassung*) focuses on maintaining contacts and initiating business in Germany. It performs support and implementation-related tasks without having any individual business discretion and is entirely dependent on the head office.

Please find more information about the registration procedure of the two different branch office categories in the "Business Establishment" fact sheet.

#### Branch Office Taxation

A branch office is subject to taxation in Germany if it is considered to be a permanent establishment according to the applicable double taxation agreement. An autonomous branch office is generally regarded as a permanent establishment, whereas a dependant branch office is only ever considered a permanent establishment under certain conditions.

The profit attributable to a German permanent establishment of a foreign corporation is taxed in Germany according to German taxation rules for corporations (corporate income tax, solidarity surcharge and municipal trade tax). For further information about corporate taxation please refer to the respective fact sheet.

In order to determine the taxable income of the permanent establishment, an analysis of its functions and risks is necessary. This means that its people functions, assets, risks, and capital have to be identified and documented. Special rules apply for tax returns.

Moreover, any transactions between the permanent establishment and the head office company or other affiliated companies must comply with transfer pricing rules.

### Other Forms

Offices that purely serve to observe the market and pave the way for initial customer contacts are often described as "representative offices." However, this term does not exist in German commercial law. Once an office is used by a foreign company for commercial activities (thus forming part of the foreign company organization), it generally must at least be registered as a dependent branch office.

This is typically the case if the foreign company has a permanent representative who conducts the commercial activities of the company in a sustained manner and, in doing so, is subject to its instruction.

An office managed by a self-employed third party (e.g. a commercial agent authorized by the company) might be considered a case in which no direct business activity is conducted by the foreign company itself. In this case, registration of the foreign company with the local trade office is generally not required. Decisive here is the actual level of independence of the agent and their freedom to act without instruction from the company.

## Business Establishment

There are different ways to enter the German market. Expanding foreign companies normally opt to establish a local subsidiary or register a local branch office. The establishment procedures are swift and efficient, in both cases requiring only a few clearly defined steps.

A subsidiary is an independent company established and predominantly held by another company (parent company). Foreign companies often choose the private limited liability company option (*Gesellschaft mit beschränkter Haftung – GmbH*) for local subsidiary formation. A branch office forms part of the foreign head office company's organization. There are two kinds of branch establishments: the autonomous and dependent branch office. These differ primarily due to the degree of independence from the head office company.

### Setting Up a GmbH

The GmbH is the most widely used legal form for corporations in Germany. It combines high flexibility with relatively few obligations and enjoys a good reputation. Another advantage of the GmbH is the limitation of liability to its corporate assets. At least one shareholder (private individual or legal entity) is required in order to establish a GmbH. The nationality and residence of the shareholder(s) and the managing director(s) of a GmbH are irrelevant. However, the company must have a German business address and a local representative. The GmbH requires a minimum share capital of EUR 25,000. It can be contributed in cash or in kind (e.g. real estate or patents). A contribution in kind must, for example, be agreed upon in the articles of association, a valuation report is necessary, and the asset must be fully contributed.

#### Necessary Documentation

In order to successfully register a business in Germany, certain documentation verifying the existence of any parent company as well as the power of representation for persons acting on behalf of it is needed. Generally, an excerpt of the foreign commercial register as well as articles of association of the foreign parent company will be required. The documentation must be notarized and either legalized or issued with an apostille. It should also be accompanied by a certified translation into German language. Please notice that the documentation required can differ depending on the legal form and origin of the foreign company. It is advisable to consult a German notary at an early stage for individual advice.

## GmbH Incorporation Procedure



### Step 1 Drafting of Articles of Association

The articles of association shape the identity and constitution of the company. Thanks to the large scope for contractual design, the GmbH is a very flexible corporation form. Mandatory content includes share capital, shareholders and respective shares held, business name, registered office, and company object.



### Step 2 Notarization of Articles of Association

The drafting and notarization of the articles of association are normally performed in one session by a German notary. The founding shareholder(s) adopt(s) its articles of association and appoint(s) one or more managing directors in a notarial deed.



### Step 3 Payment of Share Capital

Once the articles of association have been notarized, a company account should be opened and the share capital deposited. A payment of EUR 12,500 in total is sufficient for registration with the commercial register of a standard EUR 25,000 GmbH (cash contribution).



### Step 4 Commercial Register Registration

When the required share capital has been verifiably contributed to the GmbH, the managing director(s) apply for the registration of the GmbH in the commercial register (*Handelsregister*). The application is electronically filed by a notary. This must be personally signed by all managing directors of the GmbH (power of attorney not possible) and accompanied by documentation pertaining to the GmbH. If the commercial register considers all formation requirements to be fulfilled, the GmbH is registered and starts to exist as a legal entity with limited liability.



### Step 5 Trade Office Registration

Before business operations are started, the trade office (*Gewerbe-/Ordnungsamt*) of the municipality in which the business is located, must be notified about the planned activity. A business license or permit is not necessary for registering the business in the majority of cases. However, a permit or authorization may be required for some business sectors. The trade office registration requires at least one local representative.

### Setting Up a Branch Office

Any foreign company with a head office and registered business operations abroad can establish a German branch office. There are two different categories of branch offices: the autonomous branch office (*selbständige Zweigniederlassung*) and the dependent branch office (*unselbständige Zweigniederlassung*). A branch office has no independent or separate legal personality distinct from the head office itself. In legal terms, it is part of the head office business, which also is liable for any of its business obligations. A formation procedure is therefore not applicable – only the registration of the branch with German business registers is required.

The autonomous branch office is dependent upon the head office company at the internal level but engages in business activities independently. At the organizational level, autonomous branch offices are to a certain extent independent from the head office company: The autonomous branch usually has its own management with executive powers, a separate bank account, business assets and accounting (on its own or via the head office company). The dependent branch office focuses on maintaining contacts and initiating business in Germany. It performs support and implementation-related tasks without having any individual business discretion and is entirely dependent on the head office.

### Legal Certainty

Business establishment procedures in Germany provide entrepreneurs legal certainty in the commercial law field – creating transparency and offering companies the highest level of security in their day-to-day business activities. Important functions are fulfilled by German civil law notaries, and Germany's unique commercial register.

#### German Notaries

Civil law notaries are appointed lawyers sworn to impartiality and entrusted with public functions. Depending on where in Germany the notary is appointed, he or she practices either as a "single profession notary" or as an "attorney-notary." The number of notaries in each federal state is limited in order to ensure independence and impartiality. In Germany notarization is required, amongst other things, for establishment of corporations and applications for entry in the commercial register. Notary fees are stipulated by law and subject to the value of the transaction. The notary fees for a GmbH establishment depend, among other things, on the share capital. The estimated total costs for a standard GmbH are approximately EUR 800.

 [www.notar.de](http://www.notar.de)

### Branch Office Registration



#### Commercial Register Registration

Registration in the commercial register (*Handelsregister*) is only required by the autonomous branch office. The application, which is electronically filed by a German notary, must include detailed information pertaining to the foreign head office company and the branch office. This includes, for example, documentation verifying the existence of the foreign company as well as the power of representation for persons acting on its behalf. Please note that the documentation required can differ subject to the legal form and country of origin of the foreign company. It is also advisable to consult a German notary at an early stage. A dependent branch office only requires registration with the trade office.



#### Trade Office Registration

Before starting their business operations, all business operators must inform the competent local trade office (*Gewerbe-/Ordnungsamt*). This applies to all companies regardless of company form (excluding freelance professionals). Accordingly, both the autonomous and dependent branch must register in the trade office before business operations are started. Generally, the same procedure applies as for the GmbH. As with registering a GmbH, trade office registration of a branch office requires at least one local representative in Germany. A business license or permit is not required in the majority of cases. However, it may be required for some business sectors.

#### Commercial Register

The public commercial register (*Handelsregister*) ensures legal certainty in the area of commercial law by providing important information about registered companies. It is administered by the local courts (*Amtsgericht*). Some of the company data is also available online. This means that it is fairly quick and easy to check the existence and power of representation of any given company. All corporations – as well as many other enterprises requiring business operations to be set up in a commercial manner – have to be registered in the commercial register. Any application for registration in the commercial register must be submitted by a German notary.



[www.unternehmensregister.de](http://www.unternehmensregister.de)

## Entry and Residence

Germany distinguishes between different kinds of residence titles for specific purposes subject to the length of stay and intended (business) activity in Germany. These include:

- Visa (Schengen visa and national visa)
- Residence permit
- Settlement permit

A visa enables the holder to entry and short-term stays (up to 90 days in any 180-day period from the date of first entry) in Germany. A residence or settlement permit is required for long-term stays (more than 90 days in any 180-day period from the date of entry) or for work on a self-employed basis or as an employee in Germany.

The relevant residence title required depends on the investor's nationality, and particularly on the specific area of business activity intended in Germany. A residence permit is not normally required for the setting up of a business. However, a residence permit is required in those cases where the foreign national intends to run the business on-site.

### Who Needs a Residence Title?

EU citizens and citizens of the states of Iceland, Norway, and Liechtenstein do not require any residence title to be able to settle or work in Germany. Swiss nationals have to notify the local immigration office about their long-term stay in Germany in order to get a residence permit certifying their right to free movement.

#### Non-EU Citizens: Entry and Short-term Stays

Non-EU citizens generally require a Schengen visa for entry and short-term stays in Germany. However, individual rules apply for certain countries. For example, nationals from Argentina, Australia, Brazil, Canada, Israel, Japan, Mexico, New Zealand, South Korea, the USA, and Hong Kong can stay in Germany for up to 90 days (in any 180-day period from the date of first entry) without a visa.

#### Non-EU Citizens: Long-term Stays

For long-term stays, non-EU citizens require a residence or settlement permit. The respective local German mission initially issues a national visa for entry into Germany. The national visa is subsequently converted into a residence permit by the competent local immigration office (*Ausländerbehörde*). Non-EU citizens from those countries exempt from the short-term stay visa requirements also require a national visa when entering Germany for long-term stay purposes. Exceptions apply for nationals from Australia, Canada, Israel, Japan, New Zealand, South Korea, and the USA who may enter Germany for long-term stay purposes without a national visa. These foreign nationals can directly apply for the necessary residence or settlement permit at the immigration office in Germany.

#### Application Procedure

The residence title generally has to be applied for at the competent German embassy or consulate general prior to entering Germany. The respective visa is then issued in the applicant's home country within a period of a few weeks. The application fee is in general EUR 60. Additional fees of up to EUR 110 for a residence permit are also payable.

Residence title	Entitlement	Foreign nationals who require a residence title
<b>Visa (Schengen visa and national visa)</b>	Entry into Germany followed by a short-term stay (up to 90 days in any 180-day period).	Non-EU citizens excluding nationals from Argentina, Australia, Brazil, Canada, Israel, Japan, Mexico, New Zealand, South Korea, the USA, Hong Kong, and some other countries.
	Entry into Germany followed by a long-term stay (for which an additional residence or settlement permit is required).	Non-EU citizens excluding nationals from Australia, Canada, Israel, Japan, New Zealand, South Korea, and the USA.
<b>Residence permit or settlement permit</b>	Long-term stays and stays with the intention to take up gainful occupation.	Non-EU citizens excluding nationals from Iceland, Norway, Liechtenstein, and Switzerland.

### Visa for Incorporation

A Schengen business visa is sufficient for most activities in the company formation phase. It enables its holder to stay in Germany for up to 90 days, during which time all fundamental establishment activities can be performed. Setting up a company in Germany using a Schengen visa does not alone warrant residence permit issue at a later date. If necessary, a residence permit for self-employment or employment should be applied for in due time. A residence permit must also be applied for if the incorporation phase exceeds 90 days.

#### **Incorporation Activities with a Schengen Business Visa:**

- adopting and notarization of articles of association,
- registration in the commercial register,
- trade office registration (provided at least one representative on-site in Germany is available),
- other preparatory activities (e.g. the opening of a bank account, conclusion of contracts).

### Residence Permit for Self-Employment

Entrepreneurs from non-EU countries managing a company on-site in Germany in a self-employed capacity require a residence permit for the purpose of self-employment. This permit may be granted if the planned business is expected to have a positive economic effect and has secure financing in place. An individual assessment of the intended business project is then made, taking into account, e.g.: the viability of the underlying business idea, the foreigner's entrepreneurial experience, the level of capital investment, and whether an economic interest or regional need regarding the intended business activity exists. A residence permit for the purpose of self-employment is limited in time for up to three years. A settlement permit (permanent) can be granted after three years if the investment project has been successfully realized and has stable income prospects.

#### **Who is considered self-employed?**

- Entrepreneurs (including freelance professions)
- Partners in a partnership
- Majority shareholders of a GmbH who are also managing directors of the GmbH

### Residence Permit for Employment

Non-EU citizens employed in Germany require a residence permit for the purpose of taking up employment. The residence permit for the purpose of taking up employment is limited for a period of up to three years. This can however be extended. A permanent settlement permit can be issued after five years. As a rule, a residence permit for the purpose of taking up employment is only issued if a concrete job offer can be demonstrated.

Approval from the Federal Employment Agency FEA (*Bundesagentur für Arbeit*) may be required subject to the foreign national's level of qualification and the characteristics of the job to be performed in Germany. FEA approval for occupational groups is granted where:

- no suitable German or EU employees are available ("priority check"); and
- the foreign employee is hired at the same terms and conditions of employment as comparable German employees (e.g. in terms of wages and working hours).

Certain professional groups can be granted a residence permit for employment without FEA approval.

#### **Occupational Groups Exempted from FEA Approval:**

- Executives (e.g. employed managing directors, managerial employees)
- Specialists holding a German university degree
- Scientific research personnel
- EU Blue Card applicants (please see below)

#### **Highly Qualified Employees**

The so-called "EU Blue Card" allows highly qualified non-EU citizens to be fast tracked to employment in Germany. Foreigners may apply for this kind of residence permit if they hold a German university degree (or a proven comparable qualification) and demonstrate a job contract with an annual gross salary of at least EUR 50,800 (2017). The annual gross salary level is lower (EUR 39,624 in 2017) in professions with a particular skill shortage (e.g. engineers, IT specialists). This category requires FEA approval without priority check. A permanent settlement permit can be granted after 33 months – or after 21 months if the foreign citizen has attained a specified German language proficiency level.



# Corporate Taxation

Germany offers a competitive system of corporate taxation. All corporations – including the limited liability company (GmbH), the stock corporation (AG) and German permanent establishments of foreign corporations – are subject to corporate income taxation. Income taxation of corporate companies generally consists of three components:

- Corporate income tax
- Solidarity surcharge
- Trade tax

There is no consistent nationwide tax rate for corporate income taxation due to locally set varying trade tax levels. Corporate income tax rate plus solidarity surcharge are, however, determined nationwide. As a result, the total corporate tax burden can be as low as 22.83 percent in some areas. The German corporate tax average is 29.83 percent. Germany Trade & Invest can support you in identifying attractive locations in Germany. For more detailed information on the taxation of branch offices as permanent establishments of foreign corporations in Germany, please refer to the folder of this publication.

## Corporate Income Tax

Corporate income tax (*Körperschaftsteuer*) is levied as a flat nationwide tax at a rate of 15 percent of the taxable corporate income. Taxable income (i.e. annual business profits) forms the tax base for corporate income tax. Under German commercial law, corporate companies' annual profits are calculated and recorded in the annual financial statement. This also forms the basis for determining taxable income. However, German tax law provides different accounting options and income correction rules, meaning that the taxable income usually differs from the annual profit determined in the financial statement under commercial law.

### Solidarity Surcharge

The solidarity surcharge (*Solidaritätszuschlag*) is a fixed and flat nationwide component of company taxation. It is added to the corporate income tax and set at a rate of 5.5 percent of the corporate income tax rate (and not 5.5 percent of income). Taken together, the corporate income tax and solidarity surcharge amount to a total taxable rate of 15.83 percent.

## Trade Tax

Even though trade tax (*Gewerbesteuer*) is regulated by federal law, it is a municipal tax. The rules for determining the taxable income (business profits plus certain statutory additions and allowances) are the same throughout Germany. Moreover, the trade tax rate is the same for all businesses within one municipality. However, the tax rate applicable in a municipality is individually determined by each municipality. The individual trade tax rate of a specific site is therefore the decisive factor for the overall corporate tax burden. The minimum trade tax rate must be at least seven percent. There is no statutory ceiling of the trade tax rate, but the German average trade tax rate is around 14 percent. As a rule, the trade tax rate tends to be higher in urban than in rural areas. The solidarity surcharge is not levied on trade tax.

### Calculating Trade Tax

The individual trade tax amount depends on two factors:

- the multiplier (*Hebesatz*) stipulated individually by every municipality,
- the tax base rate of 3.5 percent (across Germany).

The taxable income is multiplied with the tax base rate resulting in the so-called tax base amount. This tax base amount is then multiplied by the applicable municipal multiplier. The multiplier is set by each municipality. On average, it is around 400 percent but may not total less than 200 percent. There is no upper limit for the municipal multiplier.

### Model Calculation – Trade Tax

- 
- A GmbH with an annual taxable income of EUR 1,000,000 is based in city A.
- 
- City A has stipulated a municipal multiplier of 400 percent.
- 
- The tax base amount for the GmbH is 3.5 percent of its annual taxable earnings or EUR 35,000.
- 
- The EUR 35,000 is multiplied by the municipal multiplier of 400 percent, resulting in a total trade tax amount for the GmbH of EUR 140,000.

## INVESTOR'S BASICS

### Taxation of Dividends

Germany provides an extensive network of double taxation agreements to ensure that double taxation in international business relations is ruled out. If a German subsidiary pays out dividends to a foreign parent corporation, generally a withholding tax (*Kapitalertragsteuer*) of 25 percent plus solidarity surcharge is due.

In the case of an existing double taxation agreement (DTA) with a foreign country, the withholding tax is usually levied at a significantly lower rate, e.g. 15, 10 or 5 percent. Withholding tax still paid in Germany can be credited against existing foreign tax obligations or the parent company has been exempted from dividend-payable tax in the respective DTA state. Different rules may apply for dividend payments by partnerships.



*The double taxation agreement with the USA, for example, even allows a reduction of dividend taxation to zero percent where certain requirements are fulfilled. Moreover, EU law, under certain conditions, allows tax-free transfer of dividends between all EU member states.*

### Value-added Tax (VAT)

Value-added tax (VAT) is a tax on the exchange of goods and services. Companies are generally obliged to add value-added tax to the prices of their goods or services and to invoice their customers accordingly.

In specific business-to-business transactions, the business client has to transfer the VAT to the tax authority – so-called “reverse charge” procedure (applicable for example to certain types of construction work carried out by subcontractors). The reverse charge procedure is also generally applicable for “intra-community supplies,” i.e. the sale of goods or services from an entrepreneur in one EU member state to a commercial customer in another EU member state. In general, the commercial customer has to pay VAT in his or her EU member state in these cases (“intra-community acquisition”).

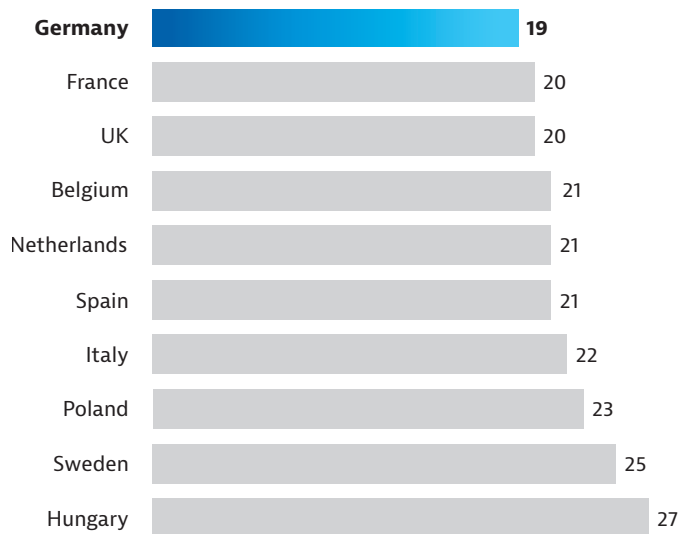
#### VAT Rate

The 19 percent VAT rate in Germany is below the European average. A reduced rate of seven percent applies to certain consumer goods and everyday services (such as food, newspapers, local public transport, and hotel stays). Some services (such as bank and health services or community work) are completely VAT exempt. Value-added tax which is collected has to be paid to the responsible tax office on a monthly, quarterly or annual basis. The exact time frame depends on the company's level of turnover.

### Input VAT Deduction

Companies themselves regularly pay VAT when they purchase goods or services. The taxes collected and paid can be balanced out in the VAT return as input VAT deduction (*Vorsteuerabzug*). For companies, value-added tax represents a transitory item only.

### Value-added Tax in Selected EU Countries standard rate in percent



Source: European Commission August 2016

### Tax Office Registration

All companies have to register with the local tax authority (*Finanzamt*) in order to be issued with a tax number required for corporate income taxation as well as national German VAT purposes. A tax assessment questionnaire must be completed before a tax number is issued. Where the company intends to deliver/import goods to or from other EU member states, it requires a specific VAT identification number issued by the Federal Central Tax Office. The VAT identification number application can be filed online or even be combined with the application for the regular tax number.

# Employees and Social Security

Germany is internationally known for its highly qualified, motivated, and conscientious workforce. Employers are free to tailor the recruiting process to their individual needs. Only a few guidelines need to be observed; such as offering jobs in a non-discriminatory manner (meaning that employers are required to hire on an equal opportunity basis without discrimination in terms of race, ethnicity, gender, religion, conviction, disability, age, or sexual orientation). Recruitment services are offered by the Federal Employment Agency (*Bundesagentur für Arbeit*), which provides its services free of charge and operates job centers in all large towns and cities in Germany. There are several programs offering extensive public support for hiring employees.

## Employment Models

### Regular Employment

Regular employment contracts are unrestricted and can be terminated by a written letter of termination, provided a mandatory notice period has been observed. In a regular employment contract, employer and employee usually agree upon a six-month probationary period during which the contract may be terminated by either party at any time with two weeks' notice.

### Fixed-term Contracts

Fixed-term contracts expire automatically on a specified date without a formal dismissal requirement. It is for the employer to decide whether to renew the contract or not. Fixed-term contracts are generally limited to a maximum of two years and may be extended up to three times provided the total duration of contract does not exceed the maximum of two years. During the first four years of a company's existence in Germany, employment contracts may be limited or extended several times up to a total duration of four years.

### Temporary Employment

Temporary employment means that a company leases employees from a temporary employment agency. However, it must be of a temporary character. The employee is legally employed by the temporary employment agency and receives the salary from them – as no formal contractual relationship exists between the leasing company and the employee. The employment conditions are usually regulated by collective agreements. The temporary employment sector is subject to statutory hourly minimum wage rates. The duration and terms of termination of service of the employee in the hiring company are subject to the service contract between the hiring company and the temporary employment agency. In 2017 a statutory maximum hire term of 18 months with an extension possibility by collective agreements is planned.

## Wage Level Development

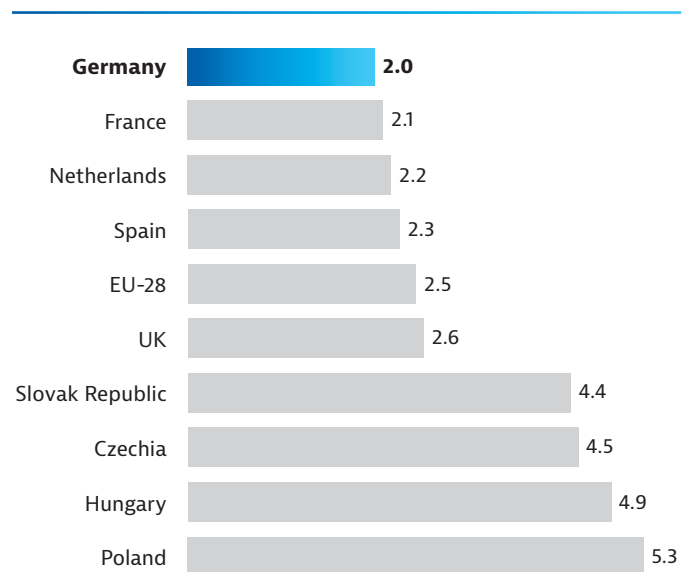
Germany is known for very stable labor costs. Since 2006, wages have risen in most European countries (EU-28), with the growth rate averaging 2.5 percent. While some countries – particularly those in eastern Europe – experienced a rise of close to or more than five percent, Germany recorded one of the lowest labor cost growth rates within the EU at just 2.0 percent.

Wages are generally subject to individual negotiations. However, a general minimum wage of EUR 8.84 per hour applies as of 2017. Transitional rules stipulating a minimum wage of at least EUR 8.50 per hour apply in some sectors (e.g. those with universally applicable collective wage agreements) until the end of 2017. The minimum wage is revised every two years.

There are also general exemptions from the national minimum wage. For instance, the following group categories are not covered by the minimum wage regulation:

- young people under 18 years of age,
- students completing compulsory internships/ internships up to three months,
- long term unemployed (one year or longer) for the first six months in employment.

## Labor Cost Growth in Business Economy 2006-2015 annual average growth in percent



Source: Eurostat 2016

## INVESTOR'S BASICS

### Social Security

In Germany, core social security provision is collectively financed by means of a process of redistribution. The current costs for pensioners, sick people, those in need of nursing care, and unemployed people are paid directly from contributions by employees and employers alike. The contributions are roughly shared equally by employer and employee with the exception of accident insurance costs which are solely borne by the employer. Each share corresponds to approximately 21 percent of the employee's gross wage.

#### Components of Social Security Insurance

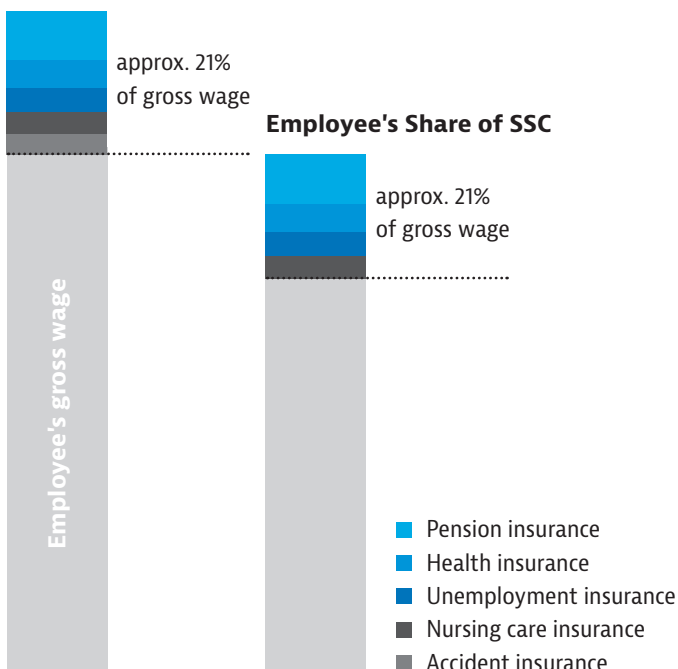
The German social security insurance system consists of:

- Pension insurance
- Health insurance
- Unemployment insurance
- Nursing care insurance
- Accident insurance

Common funds exist for all social security components. Only the statutory public health insurance provider can be chosen individually by the employee. Employees can also choose to opt out of the statutory health insurance in favor of a private health insurance scheme subject to satisfaction of a minimum monthly gross salary level.

#### Allocation of Social Security Contributions (SSC)

##### Employer's Share of SSC



### Payroll Accounting

Employees in Germany receive a net wage – meaning a salary from which tax and social security contributions have already been deducted.

#### Wage Tax

Employees pay wage tax (*Lohnsteuer*) – a special term for the income tax paid by employees. The employer is obliged to deduct the wage tax due directly from the salary of the employee and to pay it to the tax office. This must be completed electronically with authentication on a monthly, quarterly or annual basis depending on the amount of total wage tax. To obtain the electronic certificate required for authentication, the employer has to register him or herself and all employees electronically at the "Elster" online tax portal ([www.elster.de](http://www.elster.de)).

#### Social Security Contributions

Social security contributions are also withheld by the employer after calculation of the gross wage and transferred to the employee's health insurance company (which passes on the contributions excluding accident insurance to all relevant parties). The employer must register each individual employee with their respective health insurance company. The company number (*Betriebsnummer*) is a prerequisite for registration. Employers must apply for a company number at the Federal Employment Agency Saarbrücken.

Statutory accident insurance contributions have to be transferred separately by the employer to the Employer's Liability Insurance Association (*Berufsgenossenschaft*). To do so, the employer has to register separately with the *Berufsgenossenschaft* in advance.

#### International Social Security Agreements

In order to facilitate the international transfer of employees, Germany has signed social insurance agreements with countries including Australia, Brazil, Canada, China, India, Israel, Japan, South Korea, Turkey, and the USA.

Within the EU, the posting of employees is facilitated by EU regulations. This allows transferred employees to remain within the national social insurance system of their home country if they are relocated to Germany for a certain time. In this case, the employer does not have to pay German social security contributions for the employees temporarily located in Germany.



# Germany Trade & Invest Helps You

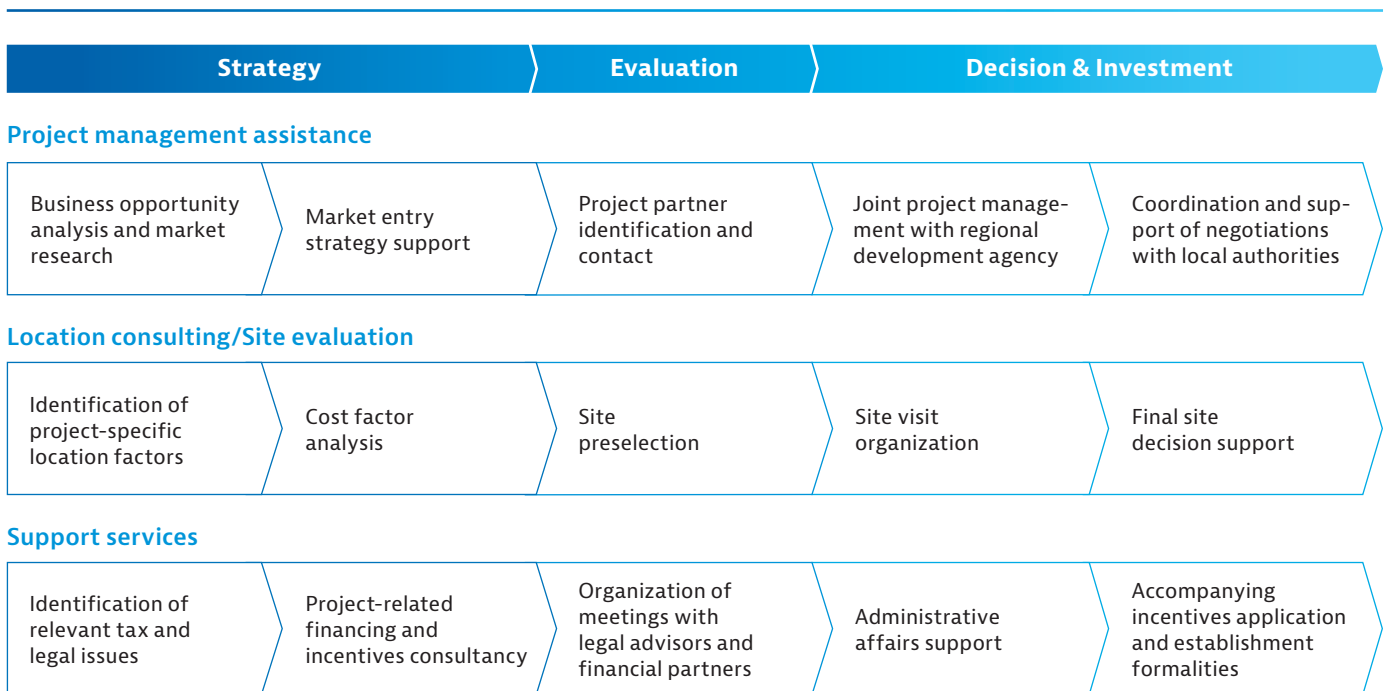
Germany Trade & Invest's teams of industry experts will assist you in setting up your operations in Germany. We support your project management activities from the earliest stages of your expansion strategy.

We provide you with all of the industry information you need – covering everything from key markets and related supply and application sectors to the R&D landscape. Foreign companies profit from our rich experience in identifying the business locations which best meet their specific investment criteria. We help turn your requirements into concrete investment site proposals; providing consulting services to ensure you make the right location decision. We coordinate site visits, meetings with potential partners, universities, and other institutes active in the industry.

Our team of consultants is at hand to provide you with the relevant background information on Germany's tax and legal system, industry regulations, and the domestic labor market. Germany Trade & Invest's experts help you create the appropriate financial package for your investment and put you in contact with suitable financial partners. Incentives specialists provide you with detailed information about available incentives, support you with the application process, and arrange contacts with local economic development corporations.

All of our investor-related services are treated with the utmost confidentiality and provided free of charge.

## Our support services for your investment project



## Investor Support Services

The Tax & Legal Services team is part of Germany Trade & Invest's Investor Support Services division. A team of experts supports foreign companies seeking to establish a business in Germany with information about Germany's tax and legal system. Information provided addresses the questions most often posed by international companies regarding incorporation; corporate taxation; entry and residence regulation; and employee and social security obligations.

The Investor Support Services division also provides a range of other services including financing and incentives information support and industry-specific market analyses.

The Investor Support Services division has more than a decade of experience and a proven track record in helping international companies set up their business operations in Germany.

For questions on how to establish your business in Germany please contact us at [invest@gtai.com](mailto:invest@gtai.com)

For more information about the tax and legal framework in Germany please visit our website: [www.gtai.com/investment-guide](http://www.gtai.com/investment-guide)

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Germany Trade & Invest (GTAI) is the economic development agency of the Federal Republic of Germany. The company helps create and secure extra employment opportunities, strengthening Germany as a business location. With more than 50 offices in Germany and abroad and its network of partners throughout the world, GTAI supports German companies setting up in foreign markets, promotes Germany as a business location and assists foreign companies setting up in Germany. All investment services and related publications are free of charge.

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