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# Doing business in Germany 2018

Moore Stephens Europe

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# Introduction

The Moore Stephens Europe *Doing Business In* series of guides have been prepared by Moore Stephens member firms in the relevant country in order to provide general information for persons contemplating doing business with or in the country concerned and/or individuals intending to live and work in that country temporarily or permanently.

*Doing Business in Germany 2018* has been written for Moore Stephens Europe Ltd by Moore Stephens Deutschland AG. In addition to background facts about Germany, it includes relevant information on business operations and taxation matters. This Guide is intended to assist organisations that are considering establishing a business in Germany either as a separate entity or as a subsidiary of an existing foreign company. It will also be helpful to anyone planning to come to Germany to work and live there either on secondment or as a permanent life choice.

Unless otherwise noted, the information contained in this Guide is believed to be accurate as of 1 August 2018. However, general publications of this nature cannot be used and are not intended to be used as a substitute for professional guidance specific to the reader's particular circumstances.

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# 1. Germany at a glance

## Geographical location and population

Germany is the most populous country within the European Union. It borders on nine other countries: Denmark, the Netherlands, Belgium, Luxembourg, France, Switzerland, Austria, the Czech Republic and Poland. In 2016, the population of Germany was estimated at 82.5 million inhabitants, living in an area of 357 000 km<sup>2</sup> (a population density of 237 inhabitants per square kilometre).

The population is currently increasing by 0.4% per year (Dec. 2016 – Dec. 2017), the main reason for this being immigration. At the end of 2016, about 9.2 million individuals without German citizenship were living in Germany (compared to about 8.59 million at the end of 2015), which is about 11% of the population. Most of them have migrated from Turkey, former Yugoslavia, Italy, Poland or Greece.

Germany is a federation of 16 states (*Bundesländer*). Its capital is Berlin; other main cities are Hamburg, Munich, Cologne and Frankfurt.

## Language and climate

The official language in Germany is German, which belongs to the Germanic branch of the Indo-European family of languages.

The climate in Germany is moderate, being influenced by the Gulf Stream and thus resulting in fairly moderate temperatures in relation to the latitude.

## Politics and government

Germany is a democratic republic with a federal system of government. Certain powers lie with the 16 federal states, others are reserved to the federal government. As in all western democracies, the separation of powers into legislative, executive and judicial is one of the cornerstones of the German constitutional system.

As Head of State positioned above these three constitutional powers is the Federal President (*Bundespräsident*), the incumbent being Frank-Walter Steinmeier, elected for a five-year term by the Federal Convention (*Bundesversammlung*, an electoral body composed of members of parliament and representatives of the federal states). The president's function is largely ceremonial. The Head of the German Government is the Federal Chancellor (*Bundeskanzler*), and the holder of that office since 2005 is Angela Merkel. Following the general election in September 2017, a 'grand coalition' was formed in March 2018 between the Chancellor's own centre-right Christian Democratic Union / Christian Social Union (CDU/CSU) and the centre-left Social Democratic Party (SPD).

The German Parliament consists of two houses with distinctive roles: the federal assembly (*Bundestag*) and the assembly of the representatives of the 16 federal states (*Bundesrat*). The Bundesrat consists of members of the governments of the 16 German states, delegated by the state governments. Members of the Bundestag are elected directly in single-member constituencies (by simple plurality) or via a regional party list (by proportional representation) for four-year terms.

## Currency, time zone, weights and measures

The euro (ISO designation: EUR) is the unit of currency. One euro is composed of 100 cents. The European Central Bank is the central banking entity that manages the European currency. At the time of going to press (late-August 2018), the euro was quoted against the US dollar at EUR 1 = USD 1.1411.

In Germany, there is a single time zone, Central European Time (CET), being GMT (Greenwich Mean Time) +1. In summer, Germany follows the daylight-saving time system (DST), starting on the last Sunday in March and ending on the last Sunday in October, during which time clocks are advanced by one hour.

Germany uses the metric system of weights and measures (the MKS system). Temperature is measured in degrees Celsius.

### **General economic outlook**

In 2008, Germany, together with most other economies, was hit by the global financial crisis. However, the unemployment rate did not significantly increase and was down to 5% in June 2018.

Inflation rates in Germany are very moderate; after 0.9 % in 2014, 0.3% and 0.5% were recorded in 2015 and 2016, respectively. The annual inflation rate in 2017 was 1.8%, in June 2018 it was up to 2.1%. For 2018 and 2019 the forecast for annual inflation growth is 1.7%, largely as a result of increasing energy costs.

## 2. Doing business

### Main forms of business organisation

#### Introduction

The most important forms of business organisations in Germany are:

Table 1

|  | Abbreviation | English translation                                |
|--|--------------|--|
| <i>Aktiengesellschaft</i>                    | AG           | Joint-Stock company                                |
| <i>Gesellschaft mit beschränkter Haftung</i> | GmbH         | Limited-Liability company                          |
| <i>Kommanditgesellschaft auf Aktien</i>      | KGaA         | Partnership limited by shares                      |
| <i>Offene Handelsgesellschaft</i>            | oHG          | General partnership                                |
| <i>Kommanditgesellschaft</i>                 | KG           | Limited partnership                                |
| <i>GmbH &amp; Co. KG</i>                     |              | Limited partnership with a GmbH as general partner |
| <i>Gesellschaft bürgerlichen Rechts</i>      | GbR          | Civil-Law partnership                              |
| <i>Niederlassung</i>                         |              | Branch (registered)                                |
| <i>Einzelunternehmer</i>                     |              | Sole Proprietor                                    |

Investors are free to choose the form of entity with which to operate in Germany. Foreign investors mainly operate through a branch or – in fiscal terms – a permanent establishment (*Betriebsstätte*), a GmbH or a partnership (mostly in the specific form of a GmbH & Co. KG (see explanation below)).

#### Joint-Stock company (*Aktiengesellschaft* – AG)

To form a joint-stock company, the Articles of Incorporation or Association need to be officially notarised by a public notary. The minimum subscribed capital is EUR 50 000, the minimum amount of members is one. Members may be individuals or companies. Liability for a member is restricted to the equity capital subscribed by that member.

An AG is characterised by a dual system of corporate governance: an executive board (*Vorstand*), appointed by a non-executive, separate supervisory board (*Aufsichtsrat*), the main rôle of which is to control the executive board. There are no restrictions as to the nationality or residence of an executive-board member, but he or she should be able to carry out his or her mandatory statutory functions in Germany. Having an executive-board member outside Germany in a foreign country may have the result for tax purposes that the company is considered to be dually resident if, for example, the day-to-day decisions are taken outside Germany. This could result in double taxation and should therefore be avoided. The supervisory board is generally elected by the shareholders' meeting, sometimes also by employees due to co-determination rights.

The costs for incorporating a joint-stock company include professional fees for drafting the articles of association (if not standard), translation fees, notarial fees (based on the amount of subscribed capital) as well a registration fee for publishing obligatory information in the Commercial Register.

#### Limited-Liability company (*Gesellschaft mit beschränkter Haftung* – GmbH)

A GmbH is the most common form of a private company with a corporate structure and full legal personality in Germany. It cannot seek a listing on the stock exchange, and its procedures and governance are less formal than those of an AG.

As with an AG, its incorporation needs to be notarised by a public notary. The minimum share capital of a GmbH is EUR 25 000 and the minimum number of shareholders is one. The liability of the company is restricted to its corporate property whereas the liability of the shareholders for the company's liabilities is restricted to their subscribed share capital. A GmbH generally has no supervisory board (but may

constitute one if it chooses to do so, and must do so if it employs more than a certain number of employees), so the shareholders have direct control over the directors of a GmbH. The shareholders appoint the managing director(s). As for an AG, there is no restriction as to the nationality or residence of managing directors, but they should be able to carry out their tasks while physically present in Germany. Actual management of the company from abroad could lead to dual residence and adverse tax consequences.

As a response to the success of the British limited company (Ltd), a specific small-sized version of the GmbH (commonly referred to as '1-Euro-GmbH') has been introduced in Germany, for which a share capital of less than EUR 25 000 may be chosen, the minimum amount theoretically being one euro. The legal name of such a GmbH has to include the term *Unternehmergeellschaft (haftungsbeschränkt)* or *UG (haftungsbeschränkt)*. A GmbH does not legally exist as such before it is formally registered in the commercial register, a procedure which primarily requires the preceding notarisation of the articles of association (*Gesellschaftsvertrag*). If business begins before the articles of association have been notarised (*Vor-Gründungsgesellschaft*), the founders are personally liable (without limitation) for debts incurred. This business operation is not regarded as a legal precursor of the subsequently incorporated GmbH under German law, thus pre-incorporation liabilities are not transformed later into liabilities of the GmbH but remain those of the founders, who are regarded as unlimited partners. This consequence can only be avoided by specific legal transactions with the creditors and/or the later GmbH.

In the time period after the articles of association have been notarised but before the company is officially registered, a fledgling kind of GmbH (*Vor-Gesellschaft*) exists, which is not identical to the abovementioned *Vor-Gründungsgesellschaft*. This 'pre-GmbH' is a separate entity of its own kind, which is liable with its assets. Individuals acting on behalf of the pre-GmbH before registration are personally liable for the obligations of the *Vor-Gesellschaft*. The shareholders of the *Vor-Gesellschaft* are not directly personally liable to the company's creditors. However, internally, i.e. vis-à-vis the later GmbH, they are liable for pre-registration losses that have resulted in a reduction of statutorily subscribed capital.

The costs of incorporating a GmbH include professional fees for drafting the articles of association (if not standard), translation fees, notarial fees (based on the amount of share capital) as well as a registration fee for publishing obligatory information in the Commercial Register.

### Partnerships

Partnerships are very common in Germany. In 2016, about 11.0% of the 3.47 million registered businesses were partnerships.

From the legal aspect, partnerships are double-faceted: with regard to most civil-law aspects they are treated as if they were separate legal entities; from the point of view of income tax, however, they are seen as transparent, i.e. the partnership as such is not a tax subject, but the partners themselves are taxed at their individual income tax rate on their share of the partnership income. For the purposes of trade tax (*Gewerbsteuer*), however, partnerships are treated as a separate taxable entity (see Chapter 6).

Unlike companies, partnerships normally do not distribute income in the form of dividends (which are subject to withholding tax). Therefore, foreign investors – being private individuals facing a comparatively unattractive withholding-tax rate under a double tax treaty – or companies not entitled to an exemption from German withholding tax for various reasons may prefer a partnership for structuring investments in Germany.

Different forms of partnerships exist in Germany. Forming a partnership requires two or more persons. The partnership agreement in general needs to be neither in writing – although written contracts are preferred to provide proof of the parameters agreed – nor notarised. However, where shares in companies or real estate are involved, notarisation may be necessary. Trading partnerships (*Personenhandelsgesellschaften*) have to be registered. Partnerships can be classified into general and limited partnerships.

**General Partnerships**

A civil-law partnership (*Gesellschaft bürgerlichen Rechts – GbR*) and a commercial trading partnership (*offene Handelsgesellschaft – oHG*) are partnerships without any limitation of liability on the part of their partners. These are jointly and severally liable for all liabilities incurred by the partnership. If not otherwise arranged in the partnership agreement, they also manage and represent the partnership jointly. For commercial purposes, the *oHG* is the preferable legal form; for example, – unlike the *GbR* – it may act under its registered legal name and enjoys more public trust because of its registration. Due to unlimited personal liability, these forms of partnership are, however, not used very often in the case of inbound investment. A *GbR* does not need to be entered in the Commercial Register. It comes into existence immediately after the partnership agreement has been signed (or agreed upon). An *oHG* must be registered in the Commercial Register and will be regarded as coming into existence after registration only.

**Limited partnership (Kommanditgesellschaft – KG)**

A limited partnership (*Kommanditgesellschaft*) consists of at least two partners, one being the general partner (*Komplementär*) and the other the limited partner (*Kommanditist*). The general partner has unlimited personal liability (like a partner of an *oHG*), whereas the limited partner is only liable up to his statutorily agreed contribution to the partnership capital as registered in the Commercial Register. A *Kommanditgesellschaft* must be registered in the Commercial Register, and its entry must state the amount of capital for which the limited partner is liable. It is legally possible and also very common in Germany to instal a GmbH (a limited-liability company in itself) as sole general partner and thereby combine the advantages of ultimate limitation of liability with the flexibility and tax nature of a partnership. This legal form is referred to as 'GmbH & Co. KG'. In this case the general partner's liability is limited to the GmbH's assets. Therefore, a GmbH & Co. KG is a common form for businesses in Germany and could be attractive for foreign investors as well.

**Branch of a foreign company**

Instead of establishing a company or forming a partnership, a foreign investor may simply start business with a German branch. As in all other cases, the business must first be registered with the local trade-supervisory authority (*Gewerbeaufsicht*) before being allowed to start business.

The branch itself may be a registered branch (registered in the Commercial Register) or a branch with no official registration. Being registered often simplifies business relations since a registered branch is more acceptable to a business partner. This is due to the fact that general information concerning the foreign company of which the German branch is part of as well as changes at the foreign-company level have to be filed at the Commercial Register. The information to be provided in case of foreign corporate headquarters includes but is not limited to the (translated) articles of association of the foreign company, its foreign registration (in the Commercial or other official register), the legal form of the company, persons having power of attorney for the company etc.

There is no minimum capital required for a branch (except e.g. in the case of financial institutions or insurance companies). However, at least for tax purposes, an endowment capital is required, enabling the branch to carry out its business.

The branch may be managed by foreign managers. However, a branch manager must be appointed for the German branch.

**European Company (Societas Europaea)**

Since 2004, it has been possible to form an SE in the European Union. An SE is incorporated in one Member State and operates under a single set of regulations in other Member States via branches. The minimum capital of an SE is EUR 120 000.

As at March 2018, 3000 SEs had been established, 2827 SEs had been established in Europe, most of them in the Czech Republic. The number of SEs with more than five employees, however, is significantly lower, with 526 in Europe, whereof 286 are in Germany.

### Labour relations and working conditions

Throughout the economic crisis, the employment market in Germany has remained relatively stable. The maximum length of the daily and weekly working hours is regulated by law in Germany.

#### Working hours

A couple of years ago, the weekly working hours for special-tariff areas were agreed at 35 hours. Since then, working hours have officially been increased to 37.5 and for civil servants to 42.5, which even exceeds the collectively agreed normal weekly working hours for employees with no tariff. The actual working hours per week including overtime for full-time employees during 2017 was 40.3 on average (EU average 40.2). The statutory maximum working day in Germany is 10 hours (under certain conditions). From the 1990 till now the average working hours have decreased by three hours conditioned by the doubled amount of part-time working people first of all women.

There are also regulations about rest periods during a day.

#### Notice periods

There are statutory notice periods in Germany, the duration of which increases depending on the time the employment has lasted. Where there is a collective employment agreement, the notice periods under that agreement apply (they may be longer or even shorter than the statutory periods). Where no collective employment agreement exists, employer and employee may agree on longer notice periods in a written employment contract.

During a qualifying period of at least six months, the notice period may by agreement be as little as two weeks.

Special protection is granted to employees on maternity leave or parental leave, apprentices after the qualifying period and severely handicapped employees.

#### Wages, fringe benefits and other regulations

The average gross income in Germany in industry and services for a full time-worker was about EUR 45 252 in 2017. From 1 January 2017 there is a minimum wage of EUR 8.84 per hour for all employees. The minimum wage will increase to EUR 9.19 as of 1 January 2019 and to EUR 9.35 as of January 2020. The minimum wage applies to all employees, with certain exceptions for e.g. apprentices, employees of an age below 18, interns not subject to social insurance contributions as well as previously long-term unemployed persons for the first six months of new employment. Along with that, firms and employees have to keep records of daily work-time and need to save the documents for two years.

In case of illness, the employer has to continue paying full pay for a further period of six weeks. After this period, the employer is no longer obliged to pay salary, and health insurance will cover the insured amounts.

Some entities pay their employees an additional amount as a kind of extra holiday pay.

Some employers pay bonuses to their employees. Also, it is quite common to have employees participating in some form of profit sharing with the employer (or the group). Large companies also grant shares to employees as compensation or bonus.



### Holidays

Based on statutory regulations, Germany grants a minimum of 24 days of holiday per year. In addition to this, up to 9 public holidays exist in Germany (plus additional regional public holidays). German employers generally grant up to 30 days of holiday during a calendar year (depending on the age of the employee and the working period with the employer so far). Employees receive normal pay during holiday leave.

### Social security system

The German social security system provides benefits for employees facing unemployment, sickness, accident or disability. In addition, pension payments are provided to retired employees. The state retirement age has recently been raised to 67 (with a current transitional period).

In return, employers and employees have to pay social security contributions. In the past, the amounts to be paid were split equally between employer and employee, but this has changed and the employee now has to bear a slightly higher percentage of social security costs than the employer. The employee's contributions are withheld by the employer and paid together with the employer's contributions to different institutions.

For more information, please refer to Chapter 9.

### Trade unions and workers' councils

Trade unions and workers' councils have a long tradition in Germany, where usually consensual processes are preferred. They are established in many areas of the industrial and service sectors. Though they may be regarded as an impediment by foreign investors, experience tells that in many cases these bodies act in a constructive way if properly informed and treated.

Wherever there are five or more permanent full-time employees in a workplace, the employees have a right to elect a workers' council, which has certain co-determination rights.

### Working conditions

Germany has established regulations about occupational health and safety. The general protection includes avoidance of occupational accidents, elimination of accident risks etc.

### Work permits, visas etc.

Germany differentiates between visas, residence permits and work permits.

Depending on their country of origin, foreign nationals may require a visa when visiting Germany.

As regards working in Germany, different permits may be necessary.

A (limited) residence permit is needed and granted under certain conditions, such as in the case of an apprenticeship, an employment, due to humanitarian, political, or family reasons, or those linked to international law. The residence permit is generally limited to a certain period of time. If the holder of the permit is also allowed to work in Germany, the permit (or an additional accompanying document) includes information as to the extent of the holder's right to gainful employment, etc.

EU and Swiss nationals do not need to obtain this permit. However, they have to have a certificate of indefinite residence (*Daueraufenthaltsbescheinigung*) if they are to work in Germany. Nationals of certain countries like the United States, Japan, Canada, Israel and Australia may first enter Germany and apply for the permit afterwards. All other nationals have to apply for the permit before entering the country.

Special regulations apply to self-employed individuals, managing directors of a GmbH, members of the executive board of a joint-stock company and managers of a branch.

Since 2011, the European Union offers a Blue Card, granting entry and stay to highly qualified employees from third countries. The Blue Card is restricted to a period between one and four years. The Blue Card system does not overrule national regulations. Germany began to implement the Blue Card on 1 August 2012. To qualify for a Blue Card, the person has to have a university degree; in addition, physicists and engineers have to have a minimum salary of EUR 37 128 and all other highly qualified persons a salary of at least EUR 47 600.

### Starting business in Germany

Before starting business in Germany, every established trade (trade carried out permanently or regularly in premises outfitted for the conduct of day-to-day business) has to be notified to the local trade-supervisory authority (*Gewerbeaufsicht*). In order to register an ID-card, a valid visa as well as a permission to start business in Germany have to be presented. In order to register a company, appropriate evidence of power of attorney for the company has to be presented in writing. A director has to provide an excerpt from the commercial register. Information on which documents are required can be found on the website of local chambers of industry and commerce.

For some commercial activities an approval needs to be obtained before business can be commenced. This includes but is not limited to the activities listed in Table 2:

Table 2

|                                      |  |                                 |
|--------------------------------------|--|---------------------------------|
| Above-ground cable layers            | Dry cleaners                                 | Opticians                       |
| Asphalters                           | Floor coating applier                        | Painters and lacquerers         |
| Barbers                              | Funeral service                              | Photographers                   |
| Book printers, typesetters, printers | Glaziers                                     | Suppliers of temporary workers  |
| Bookbinders                          | Hearing-aid acousticians                     | Screen printers                 |
| Brewers and maltsters                | Ice-cream manufacturers                      | Security-industry employees     |
| Building cleaners                    | Installation and heating engineers           | Shoemakers                      |
| Carpenters                           | Heat and sound insulation engineers          | Stonemasons and stone sculptors |
| Chemists                             | Insurance companies                          | Tailors for alterations         |
| Chimney sweeps                       | Interior decorators                          | Textile cleaners                |
| Cloth painters                       | Legal advisers                               | Theatrical-costume seamsters    |
| Cooling-device builders              | Loan agents                                  | Travel trades                   |
| Cycle mechanics                      | Long-distance and local hauliers             | Second-hand vehicle dealers     |
| Cutting-tool mechanics               | Make-up artists                              | Waste-disposal operatives       |
| Dental technicians                   | Manufacturers of signs and illuminated signs | Watchmakers                     |

Trade offices forward data from a trade register notification to the following authorities:

- Tax Office
- Chamber of Industry and Commerce
- Chamber of Craft
- Environmental Standards Authority
- Official Trades Inspectorate
- Weights and Measures Office
- Employment Office
- Trade Associations
- General local health insurance Commercial Register

## 3. Finance and investment

### Business regulation

Generally, there are no restrictions on foreigners wishing to do business in Germany or any ownership restrictions for foreigners.

General information on how to start business in Germany can be obtained from lawyers and tax advisers and also from the local Chamber of Commerce.

Businesses in the form of a company, a commercial partnership or a registered branch need to register with the local Commercial Register. Certain information has to be filed (see Chapter 1). The statutory annual financial statements have to be disclosed in (or in the case of micro-entities deposited with) the Federal Gazette (*Bundesanzeiger*), which nowadays is published in electronic form only.

In order to start a business in Germany, a trading certificate (*Gewerbeschein*) is needed, which is issued by the local Trade Supervisory Office. For a GmbH, the managing director has to obtain this in person at the Trade Supervisory Office and has to bring his or her personal identity card. After having issued the trade certificate, the Trade Supervisory Office will inform the local tax office, which will send a questionnaire to the business in order to register it for tax purposes.

Competition, as well as mergers and acquisitions, is regulated.

Germany provides for rules e.g. on fair trade, general terms and conditions for trade, competition law, merger control as well as standard matters such as the content of business letters and faxes. Special requirements also apply to e-mail.

German regulations allow protection of intellectual property, e.g. by copyright (generally limited to a period of 70 years after the death of the person), patent law (limited to 20 years after the application) and trademark law (national, European or international).

### Banking & finance

#### Banking system

The German banking system includes retail banks, cooperative banks, public-sector institutions such as the savings banks (*Sparkassen*) and the regional, state-owned *Landesbanken*. All of them offer banking services to private persons and businesses. One of the public-sector institutions is the *KfW-Mittelstandsbank*, which has the statutory duty to assist the formation of new businesses and grant investment loans to small and medium-sized businesses.

#### Capital Markets

In Germany there are nine stock exchanges, of which the Frankfurt Stock Exchange is the largest and best known. Companies may seek to finance investments through the capital market if they have shares open to public trading. Depending on conditions concerning size, transparency and governance, for example, trading would happen in the regulated or the unregulated market. General or prime-standard trading requires a minimum equity capital of EUR 1.25 million and high transparency requirements must be accomplished. Since March 2017 the Entry Standard has been compensated by the new segment called Scale and Basic Board. Both are part of the Frankfurt Open Market. The Scale segment can be used if the volume of sales is at least EUR 10 million. Scale is designed for the expansion financing for small and medium-sized businesses. Basic Board has lower requirements in transparency and equity matters and was designed to attract the businesses that cannot meet the requirements of the Scale segment.

#### Exchange Controls

In Germany, no exchange control exists, so capital can be repatriated without restrictions or approval. However, for statistical purposes, certain forms have to be completed when transferring money outside the European Union.

Also, there are strict regulations concerning money laundering.

### Incentives for investment

When investing in Germany, it may be worth checking for local investment incentives. These may be granted to special businesses, when investing and creating jobs in certain areas or, for example, for research & development activities. Incentives may differ and are not allowed to constitute a state aid in contravention of EU law.

Current examples are:

- Long-term loans to finance the acquisition of long-term assets or businesses
- Support for launching innovative products
- Regional incentives (in the newer German states and other special areas) in the form of loans with favourable interest rates
- Finance for research & development or energy projects
- Venture capital for young/small technology companies
- Different programmes for energy efficiency
- Support for cooperation between small and medium-sized companies and private or public research institutions for new technologies
- Other local incentives
- EU Incentives like HORIZON 2020, and COSME



## 4. The accounting and audit environment

### Accounting regulations & the audit requirement

With some exceptions, every business is obliged to keep accounting records and prepare financial statements (statements of financial position (balance sheets) and income statements) for a period not exceeding 12 months.

For accounting periods ending after 30 December 2012, so-called 'micro-entities' may use newly implemented simplified rules such as simplified balance-sheet and income-statement classifications. In addition, micro-entities no longer need to publish their annual financial statements. Third parties may apply for a copy of the annual financial statements on payment of a fee.

Micro-entities are defined as companies that – on two consecutive balance-sheet dates – exceed no more than one of the following three criteria:

Table 3

|                             | Micro-entity |
|-----------------------------|--------------|
| Balance-sheet total         | EUR 350 000  |
| Turnover                    | EUR 700 000  |
| Average number of employees | 10           |

With regard to an annual audit of the financial statements and the disclosure of certain information to the Federal Gazette, the size of the business entity is relevant.

Company sizes are defined by the following criteria: turnover, balance-sheet total, and average number of employees, at least two of which must not be exceeded to fall within the relevant category.

Table 4

|                             | Small          | Medium         |
|-----------------------------|----------------|----------------|
| Balance-sheet total         | EUR 6 000 000  | EUR 20 000 000 |
| Turnover                    | EUR 12 000 000 | EUR 40 000 000 |
| Average number of employees | 50             | 250            |

A large company is one that exceeds two of the criteria for medium-sized companies mentioned above.

Since the adoption of BilRUG (*Bilanzrichtlinie-Umsetzungsgesetz*), a law that changes reporting requirements for companies, in 2015, holding companies are excluded from the group of micro-entities, regardless of the criteria listed above. Companies seeking to sell bonds on the free market or already doing so are considered large companies. Also, turnover has been newly defined and the guidelines for annual reports have been revised; consulting a financial adviser before publishing financial statements is therefore to be recommended.

Obligations as to the preparation of financial statements within a certain time frame, audit, and disclosure also depend on the size of the company, as shown in Table 5:

Table 5

|   | Small   | Medium                                  | Large                                   |
|---|---|---|---|
| Preparation of financial statements             | 6 months after the fiscal year-end  | 3 months after the fiscal year-end      | 3 months after the fiscal year-end      |
| Audit requirement                               | No  | Yes                                     | Yes                                     |
| Approval of annual accounts                     | Within 11 months of the fiscal year-end                                     | Within 8 months of the fiscal year-end  | Within 8 months of the fiscal year-end  |
| Disclosure of financial statements              | Balance sheet (no income statement) within 12 months of the fiscal year-end | Within 12 months of the fiscal year-end | Within 12 months of the fiscal year-end |
| Disclosure of notes to the financial statements | Yes, simplified   | Yes                                     | Yes                                     |
| Disclosure of directors' report                 | No  | Yes                                     | Yes                                     |

Bookkeeping needs to follow German Generally Accepted Accounting Principles (German GAAP) as stated in the German Commercial Code (*Handelsgesetzbuch – HGB*). It has to be prepared in such a manner that a competent outsider will be able to get an overview of the business activities and ascertain the financial position of the business within a reasonable period of time. The bookkeeping has to be true and accurate.

For a group of companies, consolidated financial statements need to be prepared and published where the group exceeds certain thresholds. Parent companies that are themselves subsidiaries of a parent resident in an EU Member State or a member of the European Economic Area (EEA) may be exempt from the requirement to prepare consolidated financial statements under certain conditions. For a German listed company, the consolidated financial statements have to be prepared on the basis of International Financial Reporting Standards (IFRS).

# 5. Overview of the tax system

## Main taxes

The overall amount of tax collected in Germany in 2017 was EUR 674,600 million. The main taxes are:

- Corporate income tax (*Körperschaftsteuer*)
- Personal income tax (*Einkommensteuer*)
- Trade tax (*Gewerbesteuer*)
- Value added tax (*Umsatzsteuer*)
- Inheritance and gift tax (*Erbschaft- und Schenkungsteuer*)
- Property tax (*Grundsteuer*) and immovable property transfer tax (*Grunderwerbsteuer*)
- Excise duties

## Tax authorities

Depending on the type of tax, different tax authorities are responsible for assessing and collecting taxes.

With regard to income taxes, so far, there is no self-assessment scheme in place. Currently, the taxpayer has to file tax returns and the tax authorities will review them and assess afterwards. This is intended to change in the future, starting with corporate income tax.

The tax year is the calendar year.

The tax authorities are allowed to carry out tax audits. Generally, these are carried out on businesses. However, individuals may be inspected as well under certain circumstances. For those businesses subject to the legal requirement of keeping books of account, data access has to be provided to the tax auditor in XML-Format.

## 6. Taxes on business



### Corporate Income Tax

#### Scope and Extent

Corporations that are resident (see below) in Germany are subject to unlimited German corporate income tax (*Körperschaftsteuer*) on their worldwide income.

Double tax treaties may restrict these taxation rights. A non resident company is subject to German taxation on its German-source income only. This may apply to German branches of foreign companies, for example.

If a foreign corporation is a partner in a German partnership, its share of the partnership income is subject to corporate income tax in Germany.

#### Residence

Companies that are incorporated in Germany (and therefore have their registered office, that is their place of business (*Sitz*), in Germany) or have their place of actual management in Germany are regarded as resident in Germany for tax purposes.

#### Taxable entities

All types of companies (*AGs and GmbHs*) are subject to corporate income tax as are the branches of foreign companies.

Partnerships are treated as transparent for income tax purposes, i.e. each partner is taxed in Germany on that partner's share of the partnership income. For trade tax purposes, they are a separate taxable person.

#### Income calculation

Income is based on the net profit or loss derived for accounting purposes and adjusted as required for tax purposes. Necessary adjustments include:

- Differences between local GAAP and tax accounting (e.g. for different depreciation regulations or different calculations of accruals including discounting)
- Corporate income tax and trade tax are non-deductible expenses and must be added back
- Other non-deductible expenses are to be considered
- Tax-exempt income is to be deducted (e.g. capital gains from fully or partly exempt participations in other companies, subject to an add-back of deemed non-deductible expenses of 5%)
- Dividends received are largely tax-exempt where they result from participations of at least 10% of the share capital at the beginning of the tax year
- Losses from the sale of shares in a company or extraordinary impairment losses on shares must generally be added back
- Related-party debt written off where a third party would not have granted the loan under same or similar conditions must be added back (a related party here is one in which there is a direct or indirect holding of more than 25%)
- Deductibility of interest expenses exceeding EUR 3 million may be restricted (the so-called 'interest barrier' – *Zinsschranke*)
- Unrealised foreign-exchange profits or losses (losses may be recognised under certain circumstances).

#### Capital gains

Capital gains are generally treated as income subject to normal taxation. An exception exists for capital gains made by a GmbH from the sale of shares or from profit distributions from other GmbHs in which the recipient company holds at least 10% of the shares, which are tax-exempt to the extent of 95% (the remaining 5% is chargeable to corporate income tax).

For certain types of capital gain, it is possible to defer taxation by capitalising a reserve or 'rolling over' the gain, i.e. deducting it from the allowable acquisition cost of a replacement asset.

### Deductions

Expenditure incurred for the purposes of the business is generally deductible. The deduction for entertainment expenses is restricted to 70% of the amount considered to be reasonable. Gifts to business partners are only deductible where they do not exceed EUR 35 in value.

Cross-border management fees are generally deductible provided that they are arm's length and proper transfer-pricing documentation exists in respect of them.

### Depreciation

In general, fixed assets with a lifetime of more than one year are depreciable over their useful life. One exemption is land, which is not depreciable (but may be subject to a write-down). Other exemptions are intangible assets, which are unlimited in time or which are in general limited in time but have been granted consecutive extensions (e.g. concessions for transport).

Depreciation is calculated on a straight-line basis. In the past, a reducing-balance method was allowed but was abolished for acquisitions after 31 December 2010.

The Federal Ministry of Finance publishes depreciation rates for tax purposes for the most common assets of certain types of businesses (last revised in 2000). Some examples are shown in Table 6.

Table 6

| Asset                                   | Useful life (years) | Depreciation rate (%) |
|---|---------------------|-----------------------|
| Industrial buildings                    | 33.33               | 3.00                  |
| Buildings used for residential purposes | 50                  | 2.00                  |
| Buildings in lightweight construction   | 14                  | 7.14                  |
| Car parks                               | 19                  | 5.26                  |
| Outdoor lighting/street lighting        | 19                  | 5.26                  |
| Green areas                             | 15                  | 6.67                  |
| Wind-power plants                       | 16                  | 6.25                  |
| Solar -energy plants                    | 10                  | 10.00                 |
| Water-treatment plants                  | 12                  | 8.33                  |
| High-bay racking                        | 15                  | 6.67                  |
| Showcases                               | 9                   | 11.11                 |
| Alarm systems                           | 11                  | 9.09                  |
| Mobile end-devices                      | 5                   | 20.00                 |

### Dividends, interest and royalties

As from 1 March 2013, dividends received from a company (whether German or foreign) in which the recipient has a direct shareholding of less than 10% at the beginning of the tax year must be included in taxable income for corporate income tax purposes. Where a direct participation is 10% or more, dividends are generally tax-exempt, but 5% of the dividend is deemed to be a non-deductible expense and is added back to taxable income. Before 1 March 2013, all dividends received this treatment. Where an acquisition of at least 10% of the shares in a company is made during the year, the acquisition is deemed as having taken place at the beginning of the tax year, thus allowing the beneficial treatment of dividends for the whole year.

For trade-tax purposes, the same rules apply – even if received before 1 March 2013 – but a minimum participation of 15% is required and the shares also need to be held since the beginning of the taxable period of the recipient company.

Regardless of whether they are largely exempt or not, dividends from other German companies are generally received after deduction of withholding tax (*Kapitalertragsteuer*) of 26.375% (25% + 5.5% solidarity surcharge). This withholding tax is creditable against the company's corporate income tax liability, even where the dividend itself is largely exempt. In some instances, companies may apply to have foreign withholding tax treated as a deduction (expense) in computing taxable profits. However, there is no deduction or credit for foreign withholding tax on tax-exempt dividends.



In the case of German dividends received by non-resident companies, a refund of withholding tax is possible under the relevant double tax treaty or the Parent-Subsidiary Directive, if certain strict conditions are fulfilled. In the event that the minimum shareholding of 10% mentioned above is not fulfilled, a refund rule (included in the German Corporate Income Tax Act) for dividends received by corporate shareholders with their legal seat and place of business within the European Union or the European Economic Area (EEA) may be applicable under strict conditions. However, since these conditions also include fulfilment of the 10% minimum-shareholding requirement, the rule generally only applies to dividends received before 1 March 2013.

Interest received from German banks is generally subject to deduction of 26.375% withholding tax, which is fully creditable (upon application) for persons subject to unlimited taxation in Germany.

There is no withholding tax on royalties received from other German persons. Foreign royalties are taxable and any foreign withholding tax on those royalties may be credited against German tax, provided that no refund is possible in the state of source and only up to German tax on the royalties.

Royalties paid to non-residents are subject to German withholding tax, unless exempt under a double tax treaty or the EU Interest and Royalties Directive. An official certificate of exemption is needed in advance to exclude royalties and dividends from withholding tax.

### Group Taxation

German companies sharing the necessary characteristics may form a group for both accounting and tax purposes. In such a group (*Organschaft*), the profits and losses of subsidiaries are transferred to or refunded by the parent entity (*Organträger*). The necessary conditions include the following:

- The subsidiary has its place of management in Germany and its legal seat either in Germany or in another EU or EEA state
- The subsidiary has been financially integrated with the parent entity since at least the beginning of the accounting period for which the *Organschaft* is to apply
- The parent entity must have held the majority of the voting rights in the subsidiary since at least the beginning of that accounting period
- The subsidiary must enter into a profit-and-loss transfer agreement officially coming into force at the latest by the end of the year
- The agreement has to include certain references to the Joint-Stock Companies Act (*Aktiengesetz*)
- The agreement must be published in the subsidiary's entry in the Commercial Register no later than by the end of the first year

- The relevant shareholders' resolution by the subsidiary must be notarised before a German notary
- The agreement must be for a period of at least five calendar years and
- Profits and losses have actually to be transferred, i.e. in general be paid by transfer of cash by the subsidiary or the parent, as the case may be.

For the purposes of corporate income tax and trade tax, the profits and losses of the subsidiaries (*Organgesellschaften*) within the *Organschaft* for the same year may be offset against each other at the level of the parent entity. At the level of the subsidiary, (remaining) losses (from the past) for tax purposes may neither be carried back nor carried forward and set off during the *Organschaft* period.

Despite the existence of the profit and loss transfer agreement, all group members (including the subsidiaries) must nevertheless file separate returns for both corporate income tax and trade tax, even though no tax will be due at the level of the subsidiary. The income and adjustments as well as all other add-backs are to be calculated at the level of each company. The taxable amount (positive or negative) will be considered at the level of the parent and taxed there.

#### Tax losses

Tax losses incurred from 2013 onwards in any one year may be carried back (by election) to the preceding year up to an amount of EUR 1 000 000 (EUR 511 500 previously). The remainder may be carried forward against future taxable income. However, only the first EUR 1 million may be carried forward without restriction. The amount in excess of EUR 1 million may be set off against no more than 60% of the relevant year's taxable income. This calculation also applies for trade tax, but there is no loss carry-back for trade tax purposes.

#### Sample calculation

(Assumptions: loss carried forward is equal for CIT and trade tax; no adjustments/add back for trade tax purposes; no rounding-down considered.)

#### Example 1

|                                 |                  |                  |
|---------------------------------|------------------|------------------|
| Profit for the year before tax  |                  | 1 587 898        |
| Loss brought forward            | 1 800 000        |                  |
| Fully deductible                | <u>1 000 000</u> | <u>1 000 000</u> |
| Remainder                       | 800 000          | 587 898          |
| 60% of remaining taxable income | <u>352 739</u>   | <u>352 739</u>   |
| Taxable income for the year     |                  | 235 159          |
| Corporate income tax @ 15%      |                  | 35 274           |
| Solidarity surcharge @ 5.5%     |                  | 1 940            |
| Trade tax (Hamburg 16.45%)      |                  | 38 684           |
| Loss carried forward            | <u>447 261</u>   |                  |
| Profit for the year after tax   |                  | <u>1 512 000</u> |

Thus, even though the loss brought forward exceeds the pre-tax profit for the year, the restriction leaves 40% of the excess over EUR 1 million in charge, resulting in tax to be paid.

There is no time limitation on the loss carry-forward. However, restrictions apply where a shareholding of more than 25% (but less than 50%) in the company is transferred within a period of five years. In such a case, the loss brought forward will no longer be deductible to the extent of the transfer (so that if 40% of the shares are transferred, only 60% of the loss brought forward remains available). Where more than 50% of the shares are transferred, unused losses brought forward are forfeited entirely. Relief is granted under certain conditions where the hidden reserves which are fully taxable in Germany exceed the loss carry-forward.

### Thin capitalisation/Interest restriction

Although Germany has no thin-capitalisation rules as such, there is a general restriction of deductible interest in force since 2008. The deduction applies to all interest no matter whether payable to related parties or third parties.

Pursuant to the rules, net interest expense (interest expense minus interest income) is tax deductible only to the extent that it does not exceed 30% of tax EBITDA (earnings before interest, tax, depreciation and amortisation). For companies, tax EBITDA (as opposed to accounting EBITDA) excludes, for example, dividends received fulfilling participation-exemption rules, since these dividends are exempt from corporate income tax.

There are a number of exemptions from the regulations:

- Where the annual net interest expense is less than EUR 3 million
- The business is a stand-alone entity that is not a member of a consolidated group or
- The debt-equity ratio of the financed business at the end of the preceding fiscal year is no more than the debt-equity ratio of the consolidated group.

To the extent that interest expense is non-deductible under these rules, the excess may be carried forward and set off in future years under certain conditions.

### Transfer pricing

Transfer-pricing documentation rules have been implemented and are of application since 2003. This is now one of the most important topics in multinational companies with cross-border group transactions. In general, the German rules follow the OECD guidelines. However, the German rules require more detailed documentation and are more specific.

Inadequate documentation will result in adjustments by the tax authorities to the most disadvantageous option of a range of correct prices. A penalty of 5% to 10% of the adjustment amount (not the tax) may also be levied. In the event of late filing of acceptable documentation, the penalty is EUR 100 per day.

Special regulations with regard to a transfer of functions were implemented in 2008.

In the case of related-party transactions involving partnerships, the arm's length principle is applicable as it is in the case of cross-border transactions with or between companies.

### Controlled Foreign Company (CFC) Rules

German CFC rules are included in the German Foreign Tax Act (*Aussensteuergesetz*). In general, the rules apply where persons subject to unlimited German taxation hold shares of more than 50% in a foreign company that is regarded as an intermediary company and subject to a low rate of taxation. A low rate of taxation is defined as one where income is taxed at an effective rate lower than 25%. In this case, the profits of the intermediary company are treated as if they had been distributed to the German shareholder(s). Special CFC rules apply to these deemed dividends: the participation exemption, for example, does not apply.

### Withholding taxes on outbound payments

The incidence of withholding tax on outbound payments depends on both the nature (natural person or legal person) and the residence status of the recipient. Withholding taxes in Germany are applied on certain types of income such as dividends, interest, royalties and supervisory-board (*Aufsichtsrat*) director's remuneration.



### **Dividends**

Dividends from a German company are subject to deduction of 25% withholding tax plus 5.5% solidarity surcharge, making for a combined rate of 26.375%. The tax is imposed in principle regardless of the nature or residence status of the recipient.

Where the EU Parent-Subsidiary Directive applies to exempt the dividend from tax, the recipient company may apply to the German tax authorities to have the dividend paid gross. Applications are subject to special anti-abuse restrictions. Corporate shareholders entitled to lower or zero rates under a double tax treaty may also file applications. Only after having received an official certificate for exemption from withholding tax, may dividends be paid gross. Otherwise, the dividend is paid subject to the full withholding tax, and recipients may then apply for a refund to the Federal Central Tax Office (*Bundeszentralamt für Steuern*).

### **Interest**

German companies (other than financial institutions) are not generally required to deduct withholding tax on interest, whoever the beneficial owner may be.

### **Royalties**

No withholding tax is imposed on royalties payable to resident persons. In the case of non-residents, withholding tax is deducted at a special rate of 15%, plus solidarity surcharge, making for a combined rate of 15.825%. Double tax treaties generally provide that royalties are taxable only in the recipient's country of residence. However, withholding tax is to be deducted unless the creditor provides an official certificate of exemption issued by the Federal Central Tax Office to the debtor. Applications for full or partial exemption of royalties from withholding tax may be filed by the recipient with the Central Federal Tax Office, using official forms.

### **Director's remuneration**

Remuneration paid to a non-resident natural person in respect of service as a member of the supervisory board of a German company is subject to a final withholding tax of 30% (plus solidarity surcharge) of the gross remuneration. In the case of EU or EEA states' residents, expenses in direct connection with the income and proved to the creditor may be deducted before calculating the withholding tax.

### **Entertainers, artistes and sports people**

Payments made directly or indirectly to performers, athletes etc. for appearances in Germany or for the exploitation of performances in Germany are subject to withholding tax. This is generally a final tax of 15% (plus solidarity surcharge) on gross receipts. However, performers etc. who are residents of other EU or EEA states may instead apply to deduct duly evidenced expenses, in which case the tax is 30% of the net amount if the payee is an individual or 15% if the payment is made to a company.

### **Rate of corporate income tax**

The tax rate is 15% on the taxable income of the company. Additionally the so-called solidarity surcharge (*Solidaritätszuschlag*) is levied at a rate of 5.5% based on the corporate income tax. Therefore the effective tax rate is 15.825%.

### Assessment procedure

Tax is charged by assessment on the basis of the annual tax return filed by the company.

### Returns and payments

Tax returns must be filed no later than 31 May of the following calendar year. However, extensions may be granted upon application. Taxpayers using the services of tax advisers are allowed to file tax returns no later than 31 December of the following year, unless the tax authorities have requested an earlier filing date. There are penalties for late filing.

Tax instalments for corporate income tax and trade tax are payable on a quarterly basis, generally of an amount equal to one-quarter of the final liability of the previous year. Instalments of corporate income tax are due on a quarterly basis on 10 March, 10 June, 10 September and 10 December; instalments of trade tax are due on 15 February, 15 May, 15 August and 15 November. Companies may apply to adjust their payments on a more accurate estimate of the current years' liability, but applications for reduced payments must be adequately evidenced.

Final payments are generally due one month after receipt of the tax assessment. In the event of late payment, penalties of 1% of the tax outstanding for each beginning new month of late payment are charged.

Where a final tax payment or a refund of tax is due, interest of 0.5% for each full month, starting from the 16th month after the end of the tax year (e.g. for 2018 tax, interest will run from 1 April 2020) until the due date of the payment or refund will be charged or credited.

### Appeals

Appeals against an assessment must in the first place be made to the local tax office. In the event that the tax authorities officially reject the appeal, the taxpayer may lodge an appeal with the Lower Tax Court (*Finanzgericht*). If the appeal is refused, the taxpayer may apply to the court for leave to appeal to the Federal Financial Court (*Bundesfinanzhof*), which is the supreme court in tax matters. Leave to appeal will be granted if the subject matter is of sufficient importance. Questions relating to a point of European law may be referred to the Court of Justice of the European Union by any judicial instance.

### Trade tax (*Gewerbesteuer*)

Irrespective of their legal form, all commercial business operations are subject to local trade tax in Germany, i.e. all trading activities by sole traders, partnerships and companies are subject to trade tax. This tax, therefore, is additional to any corporation or income tax. Its purpose is to finance the communal infrastructure.

### Tax rates

There is no uniform tax rate, as the local authority is entitled to set the effective tax rate within a given framework. Therefore, the tax rate can vary from one authority to the next but will generally be the same for all businesses within one local-authority area. Currently, trade tax is set between 7% and 17%, the average tax rate being close to 15%. The rate is calculated on two components, the federally set base rate (*Steuermesszahl*) of 3.5% and the locally set multiplier (*Hebesatz*) of a minimum value of 2. Most local authorities with more than 50 000 inhabitants charge a multiplier of between 3.5 and 5.2, which is currently the maximum. By way of example, Berlin applies a multiplier of 4.1, so that the trade tax rate in that city is  $4.1 \times 3.5\% = 14.35\%$ . In many cases, due to the add-backs, the rate of trade tax is approximately the same as or even exceeds the rate of corporate income tax. Trade tax is not subject to the solidarity surcharge.

For a tax computation involving trade tax, see Example 1 above.

### Basis of calculation

The basis for calculating trade tax is the profit calculated according to the Income Tax Act (*Einkommensteuergesetz*). This preliminary profit for trade tax purposes in many cases is the profit for statutory purposes, adjusted by non-deductible expenses for income tax purposes.

For calculating the profit for trade tax, the income is to be further adjusted. This involves, for example, adding together:

- Interest expense
- The profit participation of silent partners
- 20% of hire and lease rentals in respect of movable assets
- 50% of rents and lease rentals in respect of immovable property
- 25% of the royalty expense,

reducing the total by EUR 100 000 and adding back 25% of the remainder.

Foreign income and foreign losses are largely disregarded.

### Deductibility

Trade tax is not a deductible expense for the purposes of the corporate income tax nor is that tax deductible for the purposes of trade tax.

### Value added tax

Value added tax (VAT), as regulated by the European Union, is generally charged on the supply of goods or services where the place of supply is in Germany, no matter whether the customer is a private person or a business. It is thus a multi-stage tax charged at each stage of the product cycle but is ultimately borne by the end-user (final consumer). It is also levied on imports of goods from outside the European Union. The overall framework of the tax is the competence of the European Union, as legislated in the VAT Directive (2006/112/EC), and associated Directives and Regulations. These allow Member States several options in application of the tax, not the least of which is the power to set rates (within certain broad parameters).

As elsewhere in the European Union, supplies may be taxable, exempt (with or without the right to deduct input VAT) or outside the scope. Exempt supplies with the right to deduct input VAT are sometimes referred to as 'zero-rated'. Businesses making exclusively taxable or zero-rated supplies generally qualify for full deduction of input VAT (the VAT they have incurred making supplies). Businesses making exclusively exempt supplies without the right to deduct do not qualify for deduction of input VAT. Businesses making a mixture of exempt supplies without the right to deduct and taxable or zero-rated supplies may fully deduct only the input VAT directly incurred on making the taxable or zero-rated supplies. Partial deduction will be available for overheads and other indirect costs.

### Taxable entities

All businesses are subject to VAT in Germany, i.e. they generally have to pay VAT on their supplies when the supply takes place in Germany.

When there is a group for VAT purposes (as a matter of fact due to fiscal, economic and organisational integration of the subsidiary into the parent or grandparent), only the parent company of the group has to file VAT returns. However, all entities issue and receive invoices. Invoices issued have to state the European VAT identification number (which – in Germany – is completely different to the local AT/ tax number) of either the subsidiary or the VAT parent company or the tax number of the VAT parent company.

### Taxable activities

The place of supply of goods is generally where the ownership of the goods is transferred. In case of a dispatch involving physical transportation of the goods, the place of supply is where the dispatch begins. Special rules apply for chain transactions and cross-border supplies.

The place of supply of services to private persons is generally the place where the supplier is located. Exceptions have to be considered for special services where the private person is located outside the European Union.

The place of supply of services to taxable persons (other businesses) is generally where the customer is located. Special exceptions exist for example for supplies in connection with immovable property.

### Exempt supplies

Examples of exempt supplies (without the right to deduct) are the letting of property, financial and insurance services and medical services.

### Standard, reduced and zero rates

The non-zero VAT rates currently in force in Germany are:

- Standard rate: 19%
- Reduced rate: 7%

The reduced rate of 7% is applied to the supply of:

- Food, with certain exceptions (restaurant services are standard-rated)
- Newspapers and books
- Entrance tickets to theatrical, musical and other artistic performances as well as to museums
- Transport within a municipality or if not exceeding 50 km
- Overnight hotel accommodation (excluding breakfast).

Cross-border supplies of goods within the European Union and exports to third countries are generally zero-rated provided proper documentation is in existence.

### Registration

Where the gross taxable turnover of a business is expected not to exceed EUR 50 000 in the current year and did not exceed EUR 17 500 in the prior year, the business, while it must still register for VAT, is not obliged to charge VAT or file VAT returns. Nor may it, therefore, deduct input VAT. This exemption scheme is voluntary, but is not available if the business has previously issued tax invoices showing a separate charge to VAT.

The registration threshold for distance sales (mail-order and other supplies to German end-consumers from outside Germany) is EUR 100 000. The registration threshold for intra-EU acquisitions (the value of goods any non-taxable person may acquire in any one year from suppliers in other Member States without being obliged to register for VAT) is EUR 12 500.

There is a zero threshold for non-established businesses, so a business from outside Germany making a supply taxable in Germany is obliged to register for German VAT immediately, no matter what the value of the supply unless the reverse charge system (with the recipient of the supply being obliged to account for VAT on the supply) is applicable.

### Returns and payment

VAT returns need to be filed on a monthly basis where the business's VAT liability in the preceding year was over EUR 7500. Where this is not the case, returns are filed quarterly, with certain exceptions.

These returns must be filed electronically, no later than the 10th of the month following the end of the return period. An extension may be granted upon application and prepayment of one-eleventh of the prior year's VAT liability.

An annual recapitulative return must also be filed electronically, generally by 31 May of the following year.

Payment on the basis of the periodic returns is due by the filing date (i.e. the 10th of the following month). Where payment needs additionally to be made on the basis of the annual return, it is due one month after filing the annual return. Where input VAT exceeds output VAT, the tax authorities will refund the excess. However, where a significant refund is claimed, a VAT inspection may be carried out before refunding the amount.

# 7. Personal taxation

## Income tax (including capital gains taxes)

### Territoriality and residence

Individuals are resident in Germany if they either maintain a home in Germany to which they have access at any time or their habitual abode (*gewöhnliche Aufenthalt*) is in Germany. A habitual place of abode exists if an individual is physically present for an extended period of time (minimum 183 days) under circumstances that indicate that the stay will not be merely temporary. Short interruptions, e.g. holidays, will not cause a break in the six-month period. Resident taxpayers are subject to unlimited taxation, which is to say they are taxable on their worldwide income.

Non-resident individuals are subject to limited taxation (i.e. on their German-source income only). German-source income includes but is not limited to income from a German branch, income from employment under certain conditions and income from immovable property located in Germany.

### Persons liable

All physical persons are liable to income tax.

Partners of a partnership, if individuals, are subject to income tax on their share of the partnership's profits.

### The family unit

It is the norm for married couples to file joint returns. This is normally advantageous as:

- The income of both is added together and divided by two
- Tax is calculated on the resulting 50% of joint income
- The tax so calculated is multiplied by two

It is nevertheless possible to apply to file separately.

Minor children (those aged 18 or less) with own income exceeding the exempt amount of EUR 9000 need to file separate returns. For 2019 the basic tax-free allowance (*Grundfreibetrag*) is EUR 9168 and for the family unit is EUR 18 336.

### Categories of income

Taxable income is classified under the following headings:

- Income from agriculture and forestry
- Business income
- Income from self-employment
- Income from employment
- Income from investment (e.g. dividends, interest, royalties)
- Rental income
- Other (including annuities and private long-term and short-term capital gains)



### Taxation of employment income

Employment income includes vacation pay, Christmas pay (additional salary generally paid in November or December), bonuses etc. The taxable amount also includes taxable fringe benefits such as a company car with private use.

### *Treatment of benefits-in-kind*

Most benefits-in-kind are valued for tax purposes at their market value, less any contribution to their cost made by the employee.

However, there are special rules for employer-provided accommodation and free meals.

The taxpayer may deduct costs directly connected with the employment, such as costs for travelling to work, employment-related magazines, subscriptions to professional organisations, business-travel expenses where the employer has not covered the lump-sum amounts allowed for tax purposes, and the additional expenses of a double household. A lump-sum deduction of EUR 1000 is granted to all employees who do not have higher expenses.

### *Salary withholding tax*

Income tax on earnings from employment is primarily collected by withholding of salary tax (*Lohnsteuer*) operated by the employer, who calculates the deduction by applying salary-tax tables, which take account of the standard deductions and allowances. The tables and tax amounts vary, depending on the salary-tax classification of the employee (tax class 3 and 5 for married couples where one earns significantly more than the other; tax class 4 for married couples earning broadly similar amounts; tax class 1 for singles etc.).

Employers account for the salary tax, together with employee and employer social security contributions, on a monthly basis.

### Taxation of personal business income & income from self-employment

The law distinguishes between income from a trade or business and income from independent personal services (i.e. self-employment), the latter category, broadly speaking, comprising self-employed architects, doctors, lawyers, accountants and members of other specific professions.

The distinction is important for two main reasons. First, taxable income from a trade or business is computed (as for companies) under the 'net-worth comparison method', which takes as its starting point the difference between the net worth recorded on the balance sheet at the end of the taxable period and that at the end of the previous taxable period (and therefore requires books and records compliant with generally accepted accounting principles and the accruals basis to be kept), whereas taxable income from professional self-employment is computed under the net-income method, which takes as its starting point gross turnover and adjusts for allowable expenses and non-recognised income etc., using a cash payments and receipts basis.

Second, income from a trade or business is subject to local trade tax as well as income tax, whereas income from professional self-employment is generally exempt from trade tax.

As stated, taxable income from a trade or business is computed similarly to the taxable income of a company, including tax depreciation of assets etc. However, the proprietor's drawings are not tax-deductible. Moreover, a partial tax credit for local trade tax is available against income tax, which is not the case in respect of corporate income tax (see under 'Local trade tax' below).

In the case of partnerships, the partnership itself is the entity subject to local trade tax. However, each individual partner may claim his or her share of the partnership's trade-tax liability against income tax on the partner's share of the profits.

### Taxation of investment income

Income from rents, net of related expenses, is taxed at progressive income tax rates. There is no deemed rental income from owner occupation.

Income in the form of interest and privately held dividends is generally subject to a flat-rate withholding tax (*Abgeltungssteuer*) of 25% plus solidarity surcharge (the effective rate thus being 26.375%), levied by the debtor or the financial institution on behalf of the debtor. Each individual taxpayer has a tax-free allowance of EUR 801 per year, so jointly assessed spouses have a total allowance of EUR 1602.

Foreign interest and dividends are also subject to the *Abgeltungssteuer* of 25%, but have to be declared in the individual's tax return, as there is no domestic withholding on this income. Any foreign withholding tax may be credited up to the limit of the German tax due, if not subject to any refund procedure in the source country. Where the individual's overall progressive rate is under 25%, he or she may opt to have the interest and dividends taxed at the progressive rate(s) instead.

Where dividends are held as a business asset, 40% of the income is tax-free and the remainder is taxable as business income at progressive income tax rates.

If a shareholder holds at least 25% of the shares in a company or alternatively holds at least 1% of the shares and also is occupationally active for the company (e.g. employed), he may opt to have the dividends taxed at progressive income tax rates (with 40% of the dividends being tax-free and expenses in direct connection being partially deductible (at 60%)).

Income from royalties is taxed at progressive rates. Royalties received in the course of a business or profession are taxable under the appropriate head of income. Royalties received as a pure investment are assimilated to rental income. Foreign withholding tax on royalties – where not subject to a refund – can be credited to a limited extent against German income tax on the royalties.

### Private capital gains and losses

Gains from the disposal of immovable property within 10 years of acquisition are subject to income tax. However, the gain is exempt if it arises from the disposal of a property that the individual has used as his or her private residence in the year of disposal and the two preceding years.

Gains from the disposal of movable property are taxable where they have been held for less than one year. Excluded are articles of daily use. If the asset concerned has generated income in that year, the period during which gains are taxable is extended to 10 years.

Total gains of less than EUR 600 in any one calendar year are exempt. Losses are offset against gains of the same year. Any losses remaining may be carried back to the preceding year or carried forward to subsequent years, but they are not available for set-off against gains from business assets or against income.

### Capital gains on shares

Capital gains on shares by individuals are generally subject to income tax regardless of the period between acquisition and sale. Where the holding does not exceed 1% of the relevant company's share capital, the gain is subject to the 25% + 5.5% tax on investment income. The gain is calculated as the difference between the disposal proceeds and the acquisition costs and related expenses.

Where the total shareholding exceeds 1% (or has done so at any time during the five preceding years), the capital gain is deemed to be business income. Sixty percent of the capital gain is subject to income tax at standard rates (no flat withholding tax rate applicable). Sixty percent of expenses in connection with the sale are deductible as well. The same applies in the case of losses from the sale, which are deductible as well.

### Allowances and deductions

The tax system provides for a large number of allowances and deductions, of which the following are some of the most significant.

- Mandatory social security contributions: these are currently not fully deductible against taxable income. Thus, primarily, in 2018, only 86% of a maximum EUR 23 712 of the mandatory old-age pension contribution (and certain contributions to approved private pension funds) is deductible. The deductible percentage increases by two percentage points each year, reaching 100% in 2025, in step with the percentage of old-age pension that is taxable. The maximum deductible in this way (including tax-deductible employer contributions) is thus EUR 20 392 in 2018.
- Contributions in respect of basic health and long-term care insurance are fully deductible
- Further contributions to health insurance and long-term care as well as unemployment insurance, accident insurance and certain contributions to approved private funds providing similar benefits are limited to EUR 2800 per year for e.g. the self-employed (or to EUR 1900 for employees, civil servants, or retired persons, for example)
- Medical expenses not reimbursed by health insurance: expenses exceeding a fixed percentage regarded as a reasonable burden – depending on the taxpayer's income and personal circumstances – are deductible
- Donations to German or EU/EEA charities fulfilling certain criteria: deductible up to 20% of total income (before deduction of expenses or allowances etc) or 0.4% of the sum of salaries and turnover for the year
- Church tax (see below) at the amount paid during the calendar year
- Two-thirds of childcare costs for children no older than 14 (25 in the case of disabled children), up to a maximum of EUR 4000 per child per year
- Child allowance (*Kinderfreibetrag*) per parent of EUR 2358 (subsistence level) per child plus a childcare allowance of EUR 1320 per parent per child in 2018; this is not available if the child tax credit (see below) is of greater benefit
- Professional or vocational training expenses incurred by the taxpayer of up to EUR 6000 per calendar year
- Maintenance payments to a divorced or separated spouse, up to a maximum of EUR 13 805 per year. The maintained spouse must give his or her consent to the deduction, be resident in Germany (or in certain circumstances elsewhere in the European Union or European Economic Area) and must be subject to tax on the income
- Support to dependent relatives up to certain maximum amounts
- A child tax credit (*Kindergeld*) of EUR 194 per month in 2018 (equivalent to EUR 2328 per year) is available for the first and second child, rising to EUR 2400 per year for the third child and EUR 2700 for the fourth and each subsequent child. The child must be maintained by the taxpayer and be under 18 (or under 25 if undergoing full-time vocational training (*Berufsausbildung*) or in military or community service) and resident in Germany or another EEA country. Jointly assessed couples only qualify once for the credit. The child tax credit cannot be combined with the child allowance; whichever is the more beneficial prevails.

### Tax rates

In Germany, the rates of income tax are not charged per band of income but according to a smoothly progressive scale. There are different classes of taxable income with different calculation methods according to the amount. They are legally defined. Broadly speaking, in 2018, for a single taxpayer, the effect is as shown in Table 7.

Table 7

| Band of taxable income (EUR) | Tax rate (%)     | Rate incl. solidarity surcharge (%) |
|------------------------------|------------------|-------------------------------------|
| First 9000                   | 0 <sup>(1)</sup> | 0                                   |
| From 9001 to 13 996          | 14.00 to 24.00   | 14.77 to 25.32                      |
| From 13 997 to 54 949        | 24.00 to 42.00   | 25.32 to 44.31                      |
| From 54 950 to 260 532       | 42.00            | 44.31                               |
| From 260 533                 | 45.00            | 47.48 <sup>(2)</sup>                |

<sup>(1)</sup> The effect of the personal allowance (see above).

<sup>(2)</sup> 45%+ 5.5% solidarity surcharge is the maximum of the tax rate regardless of the level of earnings.

The income from investment of capital (e.g. dividends, interest etc.) generally is taxable at the flat rate of 25% plus solidarity surcharge (making the effective rate 26.375%).

### Returns and payments

Until 2012, there was no general requirement to file income tax returns. Taxpayers with only one source of employment income did not need to file returns unless they had other income not subject to withholding tax and in excess of EUR 410. Employees with more than one source of employment income and all other taxpayers had to file returns.

From 2013 onwards, filing returns is mandatory for all taxpayers.

The return must generally be filed by 31 May of the following year. If a tax adviser is involved, extensions will automatically be granted up to 31 December. Income tax returns for the calendar year 2011 onward generally need to be filed electronically. Certain exceptions exist for taxpayers with employment income.

In the event of late filing, the tax authorities may levy a penalty of up to 10% of the overall tax (not only outstanding tax), subject to a maximum of EUR 25 000. The precise amount depends on the frequency of late filing, the amount of tax outstanding and other factors.

Final payments of income tax are subject to interest of 0.5% for each full month until the payment is due, starting 16 months after the end of the tax year (e.g. for 2018, interest will begin to run from 1 April 2020). Repayment interest at the same rate and same starting point is payable to taxpayers.

In the event that final payments remain due for a prior year, the tax authorities may raise estimated assessments, the tax on which is payable in quarterly instalments, beginning on 10 March.

Late payment of tax due on assessment incurs an interest charge of 1% of the outstanding tax per month or incomplete month.

### Appeals

See Chapter 6.

### Trade tax

Individuals carrying on a trade or business are also liable to trade tax. For the general rules relating to trade tax, see Chapter 6.

Although trade tax is not a deductible expense for the purposes of income tax, a tax credit is available for set-off against an individual taxpayer's liability to income tax on business income. The amount of the credit is 3.8 times an amount equal to 3.5% of the income liable to trade tax, but no more than the trade tax actually paid. The credit is further capped in proportion to the relative weight of business income as part of total income.

### Inheritance and gift taxes

Germany levies a tax on inheritances and lifetime gifts. The tax is the liability of the transferee in the case of a transfer *mortis causa*; the joint liability of transferor and transferee in the case of a lifetime gift and the liability of the transferor (or the transferor's estate) in the case of a gift or bequest for a specific (e.g. charitable) purpose.

Where either the transferor or the transferee is resident in Germany at the time of the transfer, it is the worldwide property involved that is subject to tax. Where neither the transferor nor the transferee is resident, only German-situs property is taxable. For this purpose, a German citizen who has ceased to be resident in Germany continues to be deemed resident for the first five years following emigration.

In 2016 the German Federal Constitutional Court (*Bundesverfassungsgericht*) held that the reliefs and allowances for the transfer of a business (see below) are not in line with the German constitution and therefore the whole German Inheritance and Gift Tax Act is unconstitutional. Subsequently, the German Federal Council adopted new regulations which entered into force retroactively as of 1 July 2016.

### Reliefs and allowances

A number of reliefs exist, the most important of which are for business property and residential property. Business-property relief amounts to 85% by value of the business assets, but is subject to several conditions, including continuation of the business (with its assets) for at least five years, retention of the majority of jobs (measured by the size of the payroll – the total payroll for the five following years must not be less than 400% of the payroll in the year of transfer), and a limitation on passive assets, which must not exceed 10%. The relief is increased to 100% if the business (with its assets) continues for seven years, the total payroll for the seven following years is not less than 700%, and the percentage of passive assets is not greater than 10%.

The transferor's residence may be transferred tax-free on death to his or her spouse or civil partner, provided that the transferee uses the property as his or her residence for at least the following 10 years. Exemption also applies on the same conditions to children of the deceased transferor, but is limited to properties of a living area of no more than 200 m<sup>2</sup>.

The main allowances are shown in Table 8.

Table 8

| Transferee              | Allowance (EUR) |                              |
|-------------------------|-----------------|------------------------------|
|                         | Lifetime gift   | Transfer <i>mortis causa</i> |
| Spouse or civil partner | 500 000         | 756 000 <sup>(1)</sup>       |
| Child aged under 5      | 400 000         | 452 000 <sup>(1)</sup>       |
| Child aged 5 to 9       | 400 000         | 441 000 <sup>(1)</sup>       |
| Child aged 10 to 14     | 400 000         | 430 700 <sup>(1)</sup>       |
| Child aged 15 to 19     | 400 000         | 420 500 <sup>(1)</sup>       |
| Child aged 20 to 26     | 400 000         | 410 300 <sup>(1)</sup>       |
| Grandchild              | 200 000         | 200 000                      |
| Other Class I           | 100 000         | 100 000                      |
| Class II and Class III  | 20 000          | 20 000                       |

<sup>(1)</sup> Reduced by the capitalised value of (any) survivor's pensions or similar recurrent payments to which the transferee becomes entitled.

Transferees are divided into three classes, as follows:

- Class I: spouses; civil partners; children; stepchildren; grandchildren and remoter direct ancestors (for transfers *mortis causa*, also parents and grandparents)
- Class II: siblings; nephews; nieces; stepparents; sons-in-law; daughters-in-law; parents-in-law; divorced spouses; former civil partners and (for lifetime gifts, also parents and grandparents)
- Class III: all other transferees, including legal persons

These allowances are available to resident taxpayers only. Where German-situated property is transferred between non-residents, there is a token allowance of EUR 2000 only. However, non-residents have the option to elect for taxation as residents. In that event, the allowances in Table 9 will become available, but any non-German property involved in the transfer will thereby also become taxable.

**Rates**

The rate of tax depends on the value of the assets transferred but also on the degree of consanguinity of the transferor and transferee, by reference to the three Classes enumerated above, as shown in Table 9.

Table 9

| Taxable value (EUR)      | Rate (%) |          |           |
|--------------------------|----------|----------|-----------|
|                          | Class I  | Class II | Class III |
| 1 to 75 000              | 7        | 15       | 30        |
| 75 001 to 300 000        | 11       | 20       | 30        |
| 300 001 to 600 000       | 15       | 25       | 30        |
| 600 001 to 6 000 000     | 19       | 30       | 30        |
| 6 000 001 to 13 000 000  | 23       | 35       | 50        |
| 13 000 001 to 26 000 000 | 27       | 40       | 50        |
| Over 26 000 000          | 30       | 43       | 50        |

These bands are discrete, so that, for example, the whole of a transfer of EUR 300 001 to a Class I transferee is taxed at 15% (= tax of EUR 45 000.15) whereas a transfer of EUR 300 000 is taxed at 11% (= tax of EUR 33 000.00). Marginal relief is available, whereby the excess tax caused by crossing the threshold (in this case, EUR 12 000.15) is not to exceed 50% (or where the tax rate exceeds 30%, 75%) of the amount by which the taxable amount exceeds the threshold. Here, therefore, the tax payable would be limited to EUR 33 000.50 (= EUR 33 000.00 + 0.5 (300 001 – 300 000)).

**Wealth tax**

There is no wealth tax in Germany.

## 8. Other taxes

### Property and property transfer taxes

#### Property tax

Local authorities impose an annual property tax (*Grundsteuer*) on immovable property located in their area. The property is valued for this purpose at a special 'assessed value' (*Einheitswert*), which is usually lower than market value. In April 2018 the Federal Constitutional Court held that the property tax regime to be unconstitutional. As a result, new uniform regulations for the valuation of property must be introduced by 2024 at the latest.

Where the owner lets the property to a third party, the owner is entitled to transfer the liability for the tax in full to the tenants. This requires a corresponding provision in the lease agreement.

As with trade tax, the tax rate is composed of two distinct elements. The basic federal tax, computed at 0.35% of the assessed value, is multiplied by a local coefficient, which ranges from 3.49 to 8.1 in local authorities with a population of more than 50 000, giving rise to an effective rate of between 1.22% and 2.84%.

#### Immovable property transfer tax (IPTT)

An immovable property transfer tax (*Grunderwerbsteuer* — from now on referred to as IPTT) is imposed on the acquisition of immovable property in Germany. Where German immovable property is included in the assets of a company, a direct or indirect transfer of 95% or more of the shares in the hands of a single acquirer or of controlled or controlling companies, is also subject to IPTT. Special rules apply to the direct or indirect transfer of at least 95% of the interest in a partnership over a period of five years, which will also be subject to IPTT.

Transactions exempt from IPTT include in particular the acquisition of immovable property as a result of the death of the owner, an *inter vivos* gift of immovable property, a transfer between spouses and a company reorganisation (under certain conditions). However, such transfers may be subject to gift or inheritance tax.

The charge to IPTT is based on the value of the consideration given and thus essentially on the purchase price. The tax rate varies from one federal state (*Bundesland*) to another and ranges from 3.5% to 6.5%. Most federal states apply a 5% rate.

Due to its relatively high rates, IPTT often used to be an obstacle to restructuring a group. New regulations for transferring shares within a group of companies have now been implemented. Exemption is now available, but only where the property is exchanged between a parent company and one or more 95% subsidiaries and several other conditions are satisfied. This requires close attention before a reorganisation or restructuring is affected.

## 9. Social security contributions

### Employers and employees

Mandatory social security contributions are paid into four distinct insurance funds:

- Unemployment fund (*Arbeitslosenversicherung*)
- Old-age pension fund (*Rentenversicherung*)
- Health fund (*Krankenversicherung*)
- Long-term care fund (*Pflegeversicherung*)

The liability is shared more or less equally between employers and employees. The employee's contribution is withheld from earnings together with salary tax and the employer is responsible for accounting for the amounts withheld and his own contributions.

There is a ceiling on contributions, earnings in excess of which are not subject to further contributions. A different ceiling applies in respect of unemployment and old-age pension insurance on the one hand and health insurance and long-term care insurance on the other, and also as between the former West and East Germany. The values of these various ceilings in 2018 are set out in Table 10.

Table 10

| Contribution fund    | Annual earnings ceiling (EUR) |                             |
|----------------------|-------------------------------|-----------------------------|
|                      | West Germany                  | East Germany <sup>(1)</sup> |
| Unemployment fund    | 78 000                        | 69 600                      |
| Old-age pension fund | 78 000                        | 69 600                      |
| Health fund          | 53 100                        | 53 100                      |
| Long-term care fund  | 53 100                        | 53 100                      |

<sup>(1)</sup> East Germany for this purpose consists of the *Länder* of Brandenburg, Mecklenburg-West Pomerania, Saxony, Saxony Anhalt, and Thuringia. It does not include East Berlin.

The rates payable in 2018 are set out in Table 11.

Table 11

| Contribution fund    | Rate (%)                     |                                  |
|----------------------|------------------------------|----------------------------------|
|                      | Employer                     | Employee                         |
| Unemployment fund    | 1.5                          | 1.5                              |
| Old-age pension fund | 9.3                          | 9.3                              |
| Health fund          | 7.3                          | 7.3 + x <sup>(1)</sup>           |
| Long-term care fund  | 1.275 <sup>(1)</sup>         | 1.275 <sup>(1) (2)</sup>         |
| <b>Total</b>         | <b>19.375 <sup>(3)</sup></b> | <b>19.375 + x <sup>(1)</sup></b> |

<sup>(1)</sup> As of 2016, depending on its statutes, every health insurance provider may charge an individual additional premium, to be paid solely by the employee. The previous universal additional premium rate of 0.9% has been dropped.

<sup>(2)</sup> In Saxony, the employer pays 0.775% and the employee 1.775%.

<sup>(3)</sup> The employee pays an extra 0.25% if he or she has no children.

<sup>(4)</sup> In Saxony, the employer total will be 18.875% and the employee total will be 19.875 + x. See note 2.

### The self-employed

The self-employed are not contributors to the social security system, but must take out private insurance.

## 10. Moore Stephens in Germany

Moore Stephens is represented in Germany by an alliance of 14 members, with offices in 35 German towns and cities. The alliance is presided over by Moore Stephens Deutschland AG, with its headquarters in Munich, and managed from Düsseldorf. The Alliance Management is located at:

**Sistenichstrasse 3**

**40597 Düsseldorf**

**T** +49 (0)211 2613 0822

**F** +49 (0)211 2613 0823

[info@moorestephens.de](mailto:info@moorestephens.de)

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

# Appendix 1: Double tax treaties

## Comprehensive double tax treaties

Germany has comprehensive double tax treaties with the following countries:

|                                   |                           |                             |
|-----------------------------------|---------------------------|-----------------------------|
| Albania                           | Iran                      | Pakistan                    |
| Algeria                           | Ireland                   | Philippines                 |
| Argentina                         | Israel                    | Poland                      |
| Armenia <sup>(1)</sup>            | Italy                     | Portugal                    |
| Australia                         | Ivory Coast               | Romania                     |
| Austria                           | Jamaica                   | Russia                      |
| Azerbaijan                        | Japan                     | Serbia <sup>(5)</sup>       |
| Bangladesh                        | Jersey <sup>(3)</sup>     | Singapore                   |
| Belarus                           | Kazakhstan                | Slovakia <sup>(2)</sup>     |
| Belgium                           | Kenya                     | Slovenia                    |
| Bolivia                           | Korea                     | South Africa                |
| Bosnia Herzegovina <sup>(5)</sup> | Kosovo <sup>(5)</sup>     | Spain                       |
| Bulgaria                          | Kuwait                    | Sri Lanka                   |
| Canada                            | Kyrgyzstan                | Sweden                      |
| China <sup>(4)</sup>              | Latvia                    | Switzerland                 |
| Costa Rica                        | Liberia                   | Syria                       |
| Croatia                           | Liechtenstein             | Tajikistan                  |
| Cyprus                            | Lithuania                 | Thailand                    |
| Czech Republic <sup>(2)</sup>     | Luxembourg                | Trinidad and Tobago         |
| Denmark                           | Macedonia                 | Tunisia                     |
| Ecuador                           | Malaysia                  | Turkey                      |
| Egypt                             | Malta                     | Turkmenistan <sup>(1)</sup> |
| Estonia                           | Mauritius                 | Ukraine                     |
| Finland                           | Mexico                    | United Arab Emirates        |
| France                            | Moldova <sup>(1)</sup>    | United Kingdom              |
| Georgia                           | Mongolia                  | United States of America    |
| Ghana                             | Montenegro <sup>(5)</sup> | Uruguay                     |
| Greece                            | Morocco                   | Uzbekistan                  |
| Hungary                           | Namibia                   | Venezuela                   |
| Iceland                           | Netherlands               | Vietnam                     |
| India                             | New Zealand               | Zambia                      |
| Indonesia                         | Norway                    | Zimbabwe                    |

<sup>(1)</sup> The treaty concluded with the former USSR applies.

<sup>(2)</sup> The treaty concluded with the former Czechoslovakia applies.

<sup>(3)</sup> Very limited scope of application.

<sup>(4)</sup> The treaty does not apply in Hongkong or Macau.

<sup>(5)</sup> The treaty concluded with the former Socialist Federal Republic of Yugoslavia applies.

### Double tax treaties: air transport and shipping

Germany has double tax treaties with the following jurisdictions covering profits from air transport, or from shipping and air transport, only.

|                       |                             |                      |
|-----------------------|-----------------------------|----------------------|
| Brazil <sup>(2)</sup> | Isle of Man <sup>(2)</sup>  | Venezuela            |
| Chile <sup>(2)</sup>  | Panama                      | Yemen <sup>(1)</sup> |
| Colombia              | Paraguay <sup>(1)</sup>     |                      |
| Hong Kong             | Saudi Arabia <sup>(1)</sup> |                      |

<sup>(1)</sup> Air only.

<sup>(2)</sup> Sea only.

### Double tax treaties: estates, gifts and inheritances

Germany has agreements covering taxes on estates, gifts and inheritances with the following countries.

|         |                       |                            |
|---------|-----------------------|----------------------------|
| Denmark | Greece <sup>(1)</sup> | Switzerland <sup>(1)</sup> |
| France  | Sweden                | United States of America   |

<sup>(1)</sup> These treaties cover inheritances only.

### Agreements on mutual administrative assistance

Germany has separate agreements on mutual administrative assistance in tax matters with the jurisdictions outside the European Union shown in the following table. Within the European Union, administrative assistance in the recovery of claims is guaranteed under EU Directive 2010/24/EU. Mutual administrative cooperation in the exchange of information is guaranteed under Directive 2011/16/EU. Several of Germany's double tax treaties also contain provisions for mutual administrative assistance.

|                        |               |                               |
|------------------------|---------------|-------------------------------|
| Andorra                | Cook Islands  | Monaco                        |
| Anguilla               | Gibraltar     | Montserrat                    |
| Antigua and Barbuda    | Grenada       | St Lucia                      |
| Bahamas                | Guernsey      | St Vincent and the Grenadines |
| Bermuda                | Isle of Man   | St. Kitts and Nevis           |
| British Virgin Islands | Jersey        | San Marino                    |
| Cayman Islands         | Liechtenstein | Turks and Caicos Islands      |

### Social security agreements

The interaction of national social security systems within the European Economic Area is governed by EU Regulations which also extend, by agreement (and with some differences), to Switzerland. Germany has pre-existing bilateral agreements with some of these states.

These have largely been superseded by the EU Regulations, but may be applied where, occasionally, they give a more beneficial result.

|                                   |                           |                       |
|-----------------------------------|---------------------------|-----------------------|
| Australia                         | India                     | Québec                |
| Bosnia Herzegovina <sup>(1)</sup> | Israel                    | Serbia <sup>(1)</sup> |
| Brazil                            | Japan                     | Tunisia               |
| Canada                            | Korea                     | Turkey                |
| Chile                             | Macedonia                 | United States         |
| China                             | Montenegro <sup>(1)</sup> | Uruguay               |
| Croatia                           | Morocco                   |                       |

<sup>(1)</sup> The agreement concluded with the former Socialist Federal Republic of Yugoslavia applies.

## Appendix 2: Moore Stephens around the world

Moore Stephens member firms may be found in 107 countries and territories around the world, with correspondent firms in another eight.

|                        |              |                |                      |
|------------------------|--------------|----------------|----------------------|
| Albania                | Ecuador      | Liechtenstein* | Saudi Arabia         |
| Argentina              | Egypt        | Lithuania      | Serbia               |
| Australia              | El Salvador* | Luxembourg     | Seychelles           |
| Austria                | Finland      | Macedonia      | Sierra Leone         |
| Azerbaijan             | France       | Malaysia       | Singapore            |
| Bahamas                | Germany      | Malta          | Slovakia             |
| Bahrain                | Ghana*       | Mauritius      | South Africa         |
| Bangladesh             | Gibraltar    | Mexico         | South Korea          |
| Belgium                | Greece       | Moldova        | Spain                |
| Belize                 | Guatemala    | Monaco         | Sri Lanka*           |
| Bermuda                | Guernsey     | Mongolia*      | Suriname             |
| Bolivia                | Honduras     | Morocco        | Sweden               |
| Brazil                 | Hong Kong    | Nepal*         | Switzerland          |
| British Virgin Islands | Hungary      | Netherlands    | Taiwan               |
| Bulgaria               | India        | New Zealand    | Tajikistan*          |
| Burundi                | Indonesia    | Nicaragua      | Thailand             |
| Cambodia*              | Iraq         | Nigeria        | Tunisia              |
| Canada                 | Ireland      | Norway         | Turkey               |
| Cayman Islands         | Isle of Man  | Oman           | Uganda               |
| Chile                  | Israel       | Pakistan       | Ukraine              |
| China                  | Italy        | Panama*        | United Arab Emirates |
| Colombia               | Japan        | Paraguay       | United Kingdom       |
| DR Congo               | Jersey       | Peru           | United States        |
| Costa Rica             | Jordan       | Philippines    | Uruguay              |
| Croatia                | Kazakhstan   | Poland         | Venezuela            |
| Cyprus                 | Kenya        | Portugal       | Vietnam              |
| Czech Republic         | Kuwait       | Qatar          | Yemen                |
| Denmark                | Latvia       | Romania        | Zambia               |
| Dominican Republic     | Lebanon      | Russia         | Zimbabwe*            |

\*denotes a correspondent firm only

For more detail, see [www.moorestephens.com](http://www.moorestephens.com) under 'Locations'.

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Moore Stephens International Ltd  
150 Aldersgate Street  
London  
EC1A 4AB  
United Kingdom

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